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4 MARKUP OF H.R. 3309, INNOVATION ACT

5 Wednesday, November 20, 2013

6 House of Representatives

7 Committee on the Judiciary

8 Washington, D.C.

9 The committee met, pursuant to call, at 11:33 a.m., in
10 Room 2141, Rayburn Office Building, Hon. Bob Goodlatte,
11 [chairman of the committee] presiding.

12 Present: Representatives Goodlatte, Coble, Smith,
13 Chabot, Bachus, Issa, Forbes, King, Franks, Gohmert, Jordan,
14 Poe, Chaffetz, Marino, Gowdy, Amodei, Labrador, Farenthold,
15 Holding, Collins, DeSantis, Smith, Conyers, Nadler, Scott,
16 Watt, Lofgren, Jackson Lee, Cohen, Johnson, Pierluisi, Chu,

17 Deutch, Gutierrez, Bass, Richmond, DelBene, Garcia, and
18 Jeffries.

19 Staff present: Shelley Husband, Staff Director;
20 Branden Ritchie, Deputy Staff Director/Chief Counsel;
21 Allison Halataei, Parliamentarian; Vishal Amin, Counsel;
22 Kelsey Deterding, Clerk; Perry Apfelbaum, Minority Staff
23 Director; Danielle Brown, Minority Parliamentarian; and
24 Stephanie Moore, Counsel.

25

26 Chairman Goodlatte. Good morning. The Judiciary
27 Committee will come to order. Without objection, the chair
28 is authorized to declare a recess at any time. And I want
29 to ask if there is anyone else in the audience who plans to
30 protest during the course --

31 [Laughter.]

32 Chairman Goodlatte. -- whether it is related to the
33 bill or whether it is another unrelated issue, I just want
34 to remind everyone of Rule 11 of the House Rules which
35 provides that the chairman of the committee, "punish
36 breaches of order and decorum by censure and exclusion from
37 the hearing," and we will not hesitate to do so if
38 necessary. And we appreciate all of you being here because
39 I think almost all of you are here because of the business
40 at hand before the committee.

41 Pursuant to notice, I now call up H.R. 3309 for purposes
42 of markup, and move that the committee report the bill
43 favorably to the House.

44 The clerk will report the bill.

45 Ms. Deterding. H.R. 3309, to amend Title 35, United
46 States Code, and the Leahy-Smith America Invents Act, to

47 make improvements and technical corrections and for other
48 purposes.

49 Chairman Goodlatte. Without objection, the bill is
50 considered as read and open for amendment at any point.

51 [The information follows:]

52

53 Chairman Goodlatte. And I will begin by recognizing
54 myself for an opening statement.

55 Today we are here to mark up H.R. 3309, the Innovation
56 Act. The enactment of this bill is something I consider
57 central to U.S. competitiveness, job creation, and our
58 Nation's future economic security. This bill takes
59 meaningful steps to address the abusive practices that have
60 damaged our patent system and resulted in significant
61 economic harm to our Nation.

62 During the last Congress, we passed the America Invents
63 Act, AIA. Many view the AIA as the most comprehensive
64 overhaul to our patent system since the 1836 Patent Act.
65 However, the AIA was, in many respects, a prospective bill.
66 The problems that the Innovation Act will solve are more
67 immediate and go to the heart of current abusive patent
68 litigation practices.

69 This bill builds on our efforts over the past decade.
70 It can be said that this bill is the product of years of
71 work. We have worked with members of both parties in both
72 the Senate and the House, with stakeholders from all areas
73 of our economy, and with the Administration and the courts.

74 To ensure an open, deliberative, and thoughtful process, we
75 held several hearings and issued two public discussion
76 drafts in May and September of this year, which led to the
77 formal introduction of the Innovation Act last month. I
78 strongly believe that the Innovation Act takes the necessary
79 steps to address abusive patent litigation.

80 Abusive patent litigation is a drag on our economy.
81 Everyone from independent inventors, to start ups, to mid-
82 and large-sized businesses face the constant dollars spent
83 on settlements, and litigation expenses associated with
84 abusive patent suits represent truly wasted capital, wasted
85 capital that could have been used to create new jobs, fund
86 research and development, and create new innovations and
87 technologies that promote the progress of science and useful
88 arts. And that is what innovation is really about, is it
89 not? If you are able to create something, invent something
90 new and unique, then you should be allowed to sell your
91 product, grow your business, hire more workers, and live the
92 American Dream. The Innovation Act puts forward reasonable
93 policies that allow for more transparency and brings
94 fundamental fairness to the patent system and the courts.

95 Now, the Innovation Act will not be addressing this
96 particular issue, but there has been a lot of misinformation
97 surrounding how the PTO reviews certain non-technological
98 patents. Under our WTO TRIPS obligations, we are required
99 to provide patent protection for almost all fields of
100 technology, but not non-technological subject matter. And
101 so, when Congress passed the America Invents Act, we
102 included a carefully crafted program that allowed the PTO to
103 reexamine certain non-technological patents that have not
104 been examined against the best prior art -- patents that the
105 PTO has itself identified as being the worst of the worst.
106 And over the last 2 years, PTO has successfully implemented
107 the program in a manner that is in line with a plain reading
108 of the statute, congressional intent, and Supreme Court
109 precedent in *Bilsky*.

110 I want to thank the PTO for doing their job and
111 reviewing patents which they believe are more likely than
112 not invalid. And I am confident that as their decisions are
113 reviewed and the program continues, that Congress, the
114 Supreme Court, and the Federal Circuit, and the executive
115 branch will support and affirm their good work.

116 With that being said, the Innovation Act is designed to
117 deal with systemic issues surrounding abusive patent
118 litigation as a whole and includes a number of provisions
119 designed to ameliorate this significant problem. Within the
120 past couple of years, we have seen an exponential increase
121 in the use of weak or poorly-granted patents against
122 American businesses with the hopes of securing a quick
123 payday. Many of these abusive practices are focused not
124 just on larger companies, but against small- and medium-
125 sized businesses as well. These suits target a settlement
126 just under what it would cost for litigation, knowing that
127 these businesses will want to avoid costly litigation and
128 probably pay up.

129 The patent system was never intended to be a playground
130 for litigation extortion and frivolous claims. The
131 Innovation Act contains needed reforms to address the issues
132 that businesses of all sizes and industries face from patent
133 troll type behavior, while keeping in mind several key
134 principles, including targeting abusive behavior rather than
135 specific entities preserving valid patent enforcement tools,
136 preserving patent property rights, promoting invention by

137 independents and small businesses, and strengthening the
138 overall patent system. Congress, the Federal courts, and
139 the PTO must take the steps necessary to ensure that the
140 patent system lives up to its constitutional underpinnings.

141 And let me be clear about Congress' constitutional
142 authority in this area. The Constitution grants Congress
143 the power to create the Federal courts, and the Supreme
144 Court has long recognized that the prescription of court
145 procedure falls within the legislative function. To that
146 end, the Innovation Act includes heightened pleading
147 standards and transparency provisions. Requiring parties to
148 do a bit of due diligence up front before filing an
149 infringement suit is just plain common sense. It not only
150 reduces litigation expenses, but saves the courts time and
151 resources. Greater transparency and information makes our
152 patent system stronger.

153 The Innovation Act also provides for more clarity
154 surrounding initial discovery, case management, fee
155 shifting, joinder, the common law doctrine of customer
156 stays, and protecting IP licenses in bankruptcy. Further,
157 the bill's provisions are designed to work hand-in-hand with

158 the procedures and practices of the judicial conference,
159 including the Rules Enabling Act and the courts, providing
160 them with clear policy guidance while ensuring that they are
161 not pre-determining outcomes, and that the final rules and
162 the legislation's implementation in the courts will be both
163 deliberative and effective.

164 Today in this committee, we are taking a pivotal step
165 toward eliminating the abuses of our patent system,
166 discouraging frivolous patent litigation, and keeping U.S.
167 patent laws up to date. The Innovation Act will help fuel
168 the engine of American innovation and creativity, help
169 create new jobs, and grow our economy.

170 And at this time, it is my pleasure to recognize the
171 ranking member of the committee, the gentleman from
172 Michigan, Mr. Conyers, for his opening statement.

173 Mr. Conyers. Thank you, Chairman Goodlatte, and members
174 of the committee. There are few economic issues our
175 committee will face that are more important than our patent
176 abuse issue. Intellectual property is responsible for
177 nearly half of our gross national product, domestic product,
178 and one-third of all jobs in the U.S. economy.

179 Our patent system, while not perfect, is the envy of the
180 world. And as I have stated before, I believe the issues of
181 non-practicing entities, the so-called patent trolls,
182 present some unique problems that are worthy of
183 congressional attention. There is a disconnect when shell
184 corporations with little or no assets can systematically
185 abuse the patent system. We do not know who these shell
186 companies are and if they are able to unfairly threaten
187 hundreds, if not thousands, of unsuspecting retailers. We
188 have a problem that requires a legislative solution.

189 Unfortunately, the legislation before us today
190 overreacts to these issues, and would severely undermine the
191 role of our independent judiciary, in general, and
192 innovation, in particular. I have been working most of my
193 career to foster an independent judiciary that can resolve
194 disputes between parties on a fair and dispassionate basis
195 based on an even-handed set of rules. As a matter of fact,
196 that is exactly what is happening now.

197 The Federal Circuit and the Supreme Court are in the
198 midst of altering the rules of patent fee shifting of
199 discovery and pleadings, among other things. And so, there

200 is little doubt in my mind that the judiciary is a far
201 better place than 535 members of Congress to set the proper
202 rules for their own courtrooms on these issues.

203 Furthermore, by unbalancing the patent system, we send a
204 signal to inventors, the very people doing the research and
205 developing the cures that we benefit from every day, that
206 their inventions are not worthy of full legal protection.
207 This means that the next cure for cancer or technological
208 breakthrough may never come, or it may be developed abroad
209 rather than in the United States. And by limiting the
210 committee to a single legislative hearing, by skipping
211 subcommittee and moving to markup prematurely, in my view,
212 we make it all the more difficult for members and
213 stakeholders to provide intelligent input into the process.

214 There is a broad range of patent experts and
215 stakeholders who agree with me and have written expressing
216 significant concern, if not outright opposition, to the bill
217 that is before us. And this includes the judicial
218 conference, the American Bar Association, the American
219 Association of Intellectual Property Lawyers, the Patent
220 Officers Professional Association, the American Association

221 of Universities, the Biotechnology Industry Association, the
222 21st Century Patent Coalition, Innovation Alliance, the
223 American Association for Justice, the Pharmaceutical
224 Research and Manufacturers Association, and the Institute of
225 Electrical and Electronics Engineers.

226 Because I feel so strongly that Congress must get this
227 issue right, Ranking Subcommittee Member Mel Watt and I will
228 offer a substitute that responds to the real and
229 identifiable problems of patent abuse without upsetting the
230 entire patent law system. Our substitute will also take the
231 single, most viable step toward improving patent quality --
232 ending fee diversion -- so that poor quality patents are not
233 issued to begin with.

234 I am willing to work with the chairman and all the
235 members of this committee in developing a fair, reasonable,
236 and measured approach to patent reform. The committee has a
237 long history of cooperation between the chair and the
238 ranking members on intellectual property matters. And I am
239 hopeful that we can work together to improve the legislation
240 so that it can pass the House and Senate and be signed into
241 law.

242 I thank the chair, and I yield back the balance of any
243 time that may be remaining.

244 Chairman Goodlatte. The chair thanks the gentleman and
245 is now pleased to recognize the ranking member of the
246 Intellectual Property Subcommittee, the gentleman from North
247 Carolina, Mr. Watt, for an opening statement. I do not
248 think he has one, but we will come to him if he wants to.

249 Mr. Watt. Thank you, Mr. Chairman, and this is a
250 difficult position to be in because, Mr. Chairman, a little
251 more than 2 years ago as ranking member of the Intellectual
252 Property Subcommittee, I stood shoulder to shoulder with you
253 as chairman of the Intellectual Property Subcommittee, and
254 shoulder to shoulder with Mr. Smith, then chairman of the
255 full committee, to work tirelessly to get patent reform
256 legislation out of committee to the floor and onto the
257 President's desk. It was an historic moment. Patent reform
258 efforts had lingered over the course of 3 terms of Congress.
259 But finally, forward-looking legislation designed to shore
260 up the U.S. Patent and Trademark Office and reestablished
261 our patent system as the best in the world was enacted.

262 Now, as former PTO Director David Kappos testified

263 before the committee recently, the ink is barely dry on the
264 America Invents Act and another sweeping piece of
265 legislation has been introduced. There is no doubt that the
266 deceptive and abusive practices of non-practicing entities
267 are deplorable and that congressional action to address
268 these practices is appropriate. But to quote former
269 Director Kappos again, "If there were ever a case where
270 caution is called for, this is it. Caution in turn calls
271 for a deliberative process that takes the time to reach out
272 and listen to all stakeholders, including those who will not
273 be the fastest ones off the mark. Many innovators, today's
274 Edisons, have not had time to make their views heard."

275 One of those voices is that of Louis Foreman, CEO of
276 Edison Nation, a small inventor who was instrumental in the
277 passage of the America Invents Act, and stood with us as the
278 President signed that bill into law. Louis is also my
279 constituent and proves the point made by Director Kappos.
280 In a letter to the committee yesterday, Louis, along with
281 other small inventors wrote, "The process now underway is
282 strikingly different in terms of the unprecedented haste
283 with which it is being pursued and the lack of breadth and

284 depth of key stakeholder feedback to evaluate the scope of
285 the harm that will be caused by some of the proposed
286 legislative provisions." As I have stated before, I share
287 Louis' concerns. Where is the fire here? Why are we
288 pursuing arbitrary deadlines to pass this bill which I
289 believe has as many, if not more, critics than supporters?

290 The critics and those expressing concerns are not simply
291 naysayers, but thoughtful and constructive stakeholders
292 whose views have been casually cast aside. They include
293 Chief Justice Rader of the Federal Circuit. Judge Rader has
294 volunteered his time and expertise and alerted us to some of
295 the intrusions on judicial independence in the bill that
296 could lead to negative consequences.

297 As a footnote, I must say that we have repeatedly heard
298 of Congress' authority to enact laws that impact the
299 judiciary and its processes. I do not believe anyone ever
300 questioned our authority to enact such laws, and neither is
301 Judge Rader doing so. Rather, they are questioning the
302 wisdom of doing so, particularly when scant attention has
303 been given to the web of interactions between rules of
304 judicial procedure and the laws we seek to engraft over that

305 complex, well thought out scheme.

306 The litigation reforms in this bill will not only apply
307 to the abusive litigants, but all litigants. Unfortunately,
308 the problem we have now is not with non-practicing entities,
309 but with NPLs, what I call non-practicing lawmakers who have
310 crafted legislation without consideration of how the
311 courtroom actually operates.

312 Mr. Chairman, there is a pathway to yes on this reform
313 bill, but the process thus far has taken us off course. I
314 will, therefore, join my ranking member in offering a
315 substitute, all of which I hope will highlight some of the
316 legitimate concerns that remain. And I will be offering
317 some amendments to highlight some of those as we go along.
318 Unfortunately, I cannot stand shoulder to shoulder with you
319 this time. I yield back.

320 Chairman Goodlatte. I thank the gentleman, and I am now
321 reliably informed that the chairman of the Intellectual
322 Property Subcommittee, the gentleman from North Carolina,
323 Mr. Coble, would like to make a statement.

324 Mr. Coble. I will be very brief, Mr. Chairman. This is
325 not an insignificant day. We have a capacity crowd here,

326 and this indicates to me, their presence indicates they have
327 more than a passing or casual interest in this very
328 significant issue.

329 Oftentimes when intellectual property matters are
330 discussed, little is said about jobs. But jobs that are
331 created and maintained in the intellectual property
332 community is indeed significant. I look forward to today's
333 hearing. I think it is a crucial day on the Hill, and I
334 appreciate your having advanced us to this state. And I
335 yield back.

336 Chairman Goodlatte. The chair thanks the gentleman.
337 The chair would like to advise members that we plan to
338 continue work on this legislation until it is completed
339 later on today, no matter how later that might be. And we
340 also want to keep moving. We do have a long vote series in
341 the middle of the afternoon that we will have to recess for.
342 But right now, it would be our intention to continue to
343 work. Those who have lunch engagements, we recognize that,
344 so it would be my intention under Rule 11 to not have any
345 votes during that period of time. And if we come to a point
346 where a vote is called for, we will either recess or -- can

347 attend to any lunch engagements that they had hoped to.

348 Voice. Can you repeat that? The microphone was off.

349 Chairman Goodlatte. I am sorry. So the intention of
350 the chair pursuant to Rule 11 of the House Rules is to
351 continue through lunch working on this bill, but members who
352 have lunch engagements can be assured that they will not
353 miss a vote as long as they are back here by 1:00. And we
354 will, if we come to a vote during that time, roll that vote
355 until after 1:00 or recess, depending on the circumstances
356 we find ourselves in at that point. And the chair is happy
357 to recognize --

358 Mr. Conyers. Reserving the right to object, Mr.
359 Chairman, might I suggest that we might be able to have
360 lunch during the period of time that we will be also voting
361 at the same time on the floor? Would that facilitate or
362 make things any more convenient?

363 Chairman Goodlatte. I think we would encourage as many
364 members to stay as possible, but we know of some members on
365 both sides of the aisle who have made commitments during
366 lunch, and we have previously taken breaks at lunch. But
367 since we have started late and we have a lot of business, my

368 thought would be to proceed through it. If we have a vote,
369 we will roll it until after 1:00 p.m. And that is provided
370 for under the House Rules, and it is at the discretion of
371 the chairman of the committee. But I do not want to abuse
372 that discretion, so I wanted to notify everybody in advance.
373 And we will continue to discuss this as we proceed through
374 the lunch hour. But I did want to notify those members who
375 have the need to go somewhere else that they will not miss a
376 vote if they go somewhere between now and 1:00.

377 And with that, I have a manager's amendment in the
378 nature of a substitute at the desk. And the clerk will
379 report the amendment.

380 Ms. Deterding. Amendment in the nature of a substitute
381 to H.R. 3309, offered by Mr. Goodlatte of Virginia. Strike
382 all after the enacting clause and insert the following --

383 Chairman Goodlatte. Without objection, the amendment is
384 considered as read.

385 [The amendment of Chairman Goodlatte follows:]

386

387 Chairman Goodlatte. And I recognize myself to explain
388 the amendment.

389 The manager's amendment was developed based on
390 discussion with a cross-range of industry stakeholders, the
391 input of members from the House and Senate, the courts, and
392 the Administration, including the U.S. Patent and Trademark
393 Office. The main provisions include the following:
394 clarifications and edits to the heightened pleading
395 standards provision to ensure that the provision works
396 effectively and can be complied with. In the joinder
397 provision, we include language to ensure that it triggers
398 when a party to a patent infringement case is unable to
399 satisfy a fee award providing adequate notice and
400 certification measures to indicate whether a party has the
401 financial capacity to satisfy the award.

402 In the discovery, before a markman provision, it
403 provides additional discretion for the courts to ensure the
404 provision does not result in reverse gamesmanship. It
405 includes updates to the customer stay provision to account
406 for consent judgments, time limits for seeking a stay,
407 cleaner estoppel language, and no implied limits on

408 intervention. We also include additional discretion for the
409 judicial conference in implementing the provision on core
410 document discovery. It extends our protection of IP
411 licenses in bankruptcy to include trademarks.

412 The manager's amendment also includes a study examining
413 the feasibility of patent small claims courts that are
414 important to our independent inventor community. The
415 manager's amendment makes additional clarifications and
416 modifications that on the whole make necessary and positive
417 improvements to our patent system. The Innovation Act
418 targets abusive patent litigation, protects the patent
419 system, increases transparency, prevents extortion, and
420 provides greater clarity.

421 I urge members to support the amendment, which
422 accommodates input from many members of the committee, as
423 well as various stakeholders, and improves the bill.

424 Mr. Conyers. Mr. Chairman --

425 Chairman Goodlatte. Are there amendments to the
426 amendment?

427 Mr. Conyers. Mr. Chairman, might I be recognized to
428 comment on the amendment?

429 Chairman Goodlatte. The gentleman moves to strike the
430 last word and is recognized for 5 minutes on the manager's
431 amendment.

432 Mr. Conyers. I thank you. I may be pretty brief on
433 this. But I should explain my reluctance about the
434 manager's amendment and why I oppose it. And the simple
435 reason is that it would make sweeping and unnecessary
436 changes to patent litigation and encroach upon the
437 independence of the Federal judiciary, among other things.
438 The manager's amendment still includes provisions which
439 contain highly problematic proposals, including limits on
440 pleadings and discovery and intrusive mandates on the court
441 system.

442 The manager's amendment imposes greater burdens on
443 pleading requirements. These heightened pleading
444 requirements would complicate and delay litigation leading
445 to disputes over whether the pleading requirements have been
446 met. The fee shifting language in the manager's amendment
447 is extremely broad and would apply to any civil action in
448 which any party asserts a claim for relief arising under any
449 act of Congress relating to patents. This is far too wide.

450 That scope would sweep in over 25 statutes containing patent
451 law clauses, including the Space Act, the Atomic Energy Act,
452 the Non-Nuclear Research and Development Act, as well as all
453 titles of the omnibus bills in which the Bayh-Dole Act and
454 amendments became law. The breadth of the proposed
455 amendment will impair parties' ordinary enforcement
456 procedures and litigation activities outside the scope of
457 abusive patent litigation.

458 The language in the manager's amendment dealing with
459 discovery is unduly rigid. For example, consideration
460 should be given to whether a judge should be permitted to
461 expand discovery under exigent circumstances, such as
462 preserving evidence, including witness testimony, that may
463 otherwise be lost. According to the IP Section of the
464 American Bar Association, the discovery language in the bill
465 would further delay the resolution of patent litigation.

466 And finally, another problematic provision is the
467 removal of judicial discretion with statutory limitations on
468 discovery in all patent litigation. The manager's amendment
469 also requires the judicial conference to adopt rules and
470 procedures detailed by Congress. This would be an

471 unnecessary mandate on the courts, especially with respect
472 to their rulemaking authority, and would constitute an
473 unnecessary imposition on the independence on the judicial
474 branch.

475 Now, the American Intellectual Property Law Association
476 -- the AIPLA -- the American Association for Justice, the
477 Innovation Alliance, and the Association of American
478 Universities have all expressed serious concerns about the
479 manager's amendment. As was noted in their letter to the
480 committee, many of the requirements in the manager's
481 amendment would intrude on the established role of the
482 judicial conference, and would overly restrict the
483 traditional discretion of district judges to manage their
484 cases. In addition, the higher education community notes
485 that many of the provisions in the manager's amendment would
486 undercut the value of a patent to encourage investment in
487 new technology, which is why patents exist and how
488 universities use them.

489 Please, my fellow colleagues on the committee, do not
490 take these concerns lightly, and join with me in strongly
491 opposing the manager's amendment. I return any of my unused

492 time, and thank the chair.

493 Chairman Goodlatte. The chair thanks the gentleman, and
494 asks are there any amendments to the amendment.

495 Mr. Issa. Mr. Chairman? Mr. Chairman?

496 Chairman Goodlatte. For what purpose does the gentleman
497 from Michigan seek recognition?

498 Mr. Conyers. Mr. Chairman, I have an amendment at the
499 desk.

500 Chairman Goodlatte. The clerk will report the
501 amendment.

502 Mr. Conyers. This is the alternative substitute with --

503 Ms. Deterding. Amendment to the amendment in the nature
504 of a substitute to H.R. 3309, offered by Mr. Conyers of
505 Michigan and Mr. Watt of North Carolina --

506 Mr. Conyers. I ask unanimous consent that the amendment
507 be considered as read.

508 Chairman Goodlatte. Without objection, the amendment
509 will be considered as read.

510 [The amendment of Mr. Conyers follows:]

511

512 Mr. Conyers. Members of the committee, we are offering
513 this Democratic alternative with the ranking subcommittee
514 member, Mel Watt. I believe -- we believe -- that are
515 identifiable abuses in the patent system that do require
516 legislative consideration. These include an inability
517 oftentimes to identify the real party in interest, undue
518 legal threats against end users and retailers, and we
519 address these issues in our measured and balanced amendment
520 that we put forward.

521 This amendment builds largely in part on a patent reform
522 measure that the Senate Judiciary chair, Mr. Leahy,
523 introduced only yesterday, and which the President of the
524 United States strongly supports. And our amendment would do
525 the following: one, provide full funding for the United
526 States Patent and Trademark Office by creating a revolving
527 fund so that the USPTO will be able to keep all of the user
528 fees it collects. What could be more fundamental than
529 freeing them up from this restriction that has hobbled them
530 for so many years?

531 Two, our amendment would promote transparency of patent
532 ownership by using a well-established standard used by many

533 Federal courts to require plaintiffs to disclose entities
534 with an interest in the patent. Then we would protect
535 customers who are targeted in infringement suits by
536 providing an option to stay the case against them until the
537 manufacturer litigates the alleged infringement.

538 In addition, we would in this amendment direct the
539 Patent and Trademark Office to develop educational resources
540 for small business that are targeted in patent suits. We
541 would also help innovators by ensuring that applicants do
542 not abuse the patent system by simply filing variations on
543 their patents to extend the length of the patent term. And
544 it instructs a study on the widespread use of deceptive
545 demand letters.

546 Now, many members and a broad range of patent
547 stakeholders have expressed strong opposition to the
548 introduced bill and the manager's amendment, and so, our
549 amendment is a step toward addressing so many of these
550 concerns. While not perfect, our amendment furthers the
551 discussion and provides a responsive and measured approach
552 without unbalancing the entire patent system. I urge my
553 colleagues on the committee to give careful consideration

554 and support to our amendment. And I return the balance of
555 my time.

556 Chairman Goodlatte. The chair thanks the gentleman and
557 recognizes himself in opposition to the amendment. I must
558 strongly oppose the amendment. I appreciate the efforts of
559 the gentleman from Michigan and the gentleman from North
560 Carolina. This substitute overlaps a number of the
561 provisions -- a great many provisions -- in the bill
562 introduced by Chairman Leahy in the Senate, and that bill
563 overlaps many of the provisions that are in our underlying
564 bill. And, therefore, there are some things in common.
565 However, this bill includes additional provisions that
566 create serious problems, and this substitute does not even
567 include all of the provisions in the Leahy-Lee bill. It
568 omits provisions that are important to our Senate
569 colleagues.

570 The amendment's transparency provision would require a
571 patent owner to "disclose to the court and all adverse
572 parties" any person known by the patentee to have a
573 financial interest of any kind in a party to the proceeding.
574 The bill then defines financial interest in the context of

575 the judicial recusal provision in the law. Under this
576 definition, financial interest means ownership of a legal or
577 equitable interest, however small. This would clearly
578 appear to include ownership of a single share of stock in a
579 company. Moreover, this disclosure is required not just to
580 be made with respect to the patentee, but by the terms of
581 the bill with respect to a party to the proceeding. This
582 would mean that a patentee would have to disclose all known
583 shareholders of even the defendant or any other party in the
584 lawsuit. This is obviously an absurd requirement. I assume
585 that the sponsors did not intend to require this, but this
586 is what their language requires. Clearly the substitute
587 needs more work.

588 This amendment also includes a Patent and Trademark
589 Office fees provision. I am very sympathetic to concerns
590 about PTO fee diversion, but it would have the effect of
591 becoming a poison pill to the bill as we try to move it to
592 the House floor. Adopting this amendment would cause a
593 point of order under House Rule 21 to lie against the bill
594 on the House floor. This rule prohibits a committee other
595 than the Appropriations Committee from reporting a bill

596 carrying an appropriation. The rule also prohibits a
597 committee other than the Ways and Means Committee from
598 reporting a bill containing a tax or tariff.

599 I fully understand the frustration of the members on
600 this panel who are concerned about the fact that the PTO
601 does not enjoy the full use of the fees collected. However,
602 if we are going to address other pressing problems facing
603 the patent system relating to litigation, we must defeat
604 this amendment so that the bill may proceed to the floor of
605 the House unencumbered. So I stand in strong opposition to
606 the amendment.

607 Who seeks time? The gentleman from North Carolina is
608 recognized for 5 minutes.

609 Mr. Watt. Thank you, Mr. Chairman. Let me say a few
610 words about the chairman's substitute and about our
611 substitute for the chairman's substitute. First of all, I
612 think our substitute for what the chair has offered suffers
613 from some of the same concerns that I have expressed about
614 the chair's bill. Because we have rushed into this process
615 so fast, we have not been able to vet what is in our
616 substitute much better than being able to vet what is in the

617 chair's bill originally and in the chair's substitute. That
618 is a real concern.

619 I think our substitute for the chair's substitute is
620 better than his substitute, but I would be the last person
621 to tell you that I think our substitute is perfect because
622 we are operating under the same time constraint, which we
623 did not create, that the chair is operating on. I do not
624 know why we are in such a hurry, but that is a real problem
625 in this bill.

626 Second, probably the most important thing our substitute
627 does is to get rid of a lot of the controversial provisions
628 that are in the chairman's substitute. We had a hearing
629 here in this committee several weeks ago, and the first
630 question I asked the panel was, is there a list of things
631 that everybody is universally in agreement about, and there
632 were. There was such a long list of things. There were a
633 number of things that the chair and ranking member of the
634 full committee and the chair and ranking member of the
635 subcommittee all agree on, and there is bipartisan, multi-
636 philosophical agreement about. Our substitute incorporates
637 those things a lot more, and our effort is to try to find

638 common ground.

639 But at the base, the problem here is that we are rushing
640 into something both in the bill that was introduced, and in
641 the chairman's substitute, and in our substitute to the
642 chairman's substitute. So when the chairman accuses us of
643 not having thought out every single provision in our
644 substitute, all I can say is "guilty." You are absolutely
645 right. If you give me time to consult with all the players
646 in the industry, then we could do that. If you had taken
647 the time -- if the chair had taken the time -- to consult
648 and find common ground with everybody that is out there, we
649 could have a bill that could pass out of this committee
650 without being here on into the night and without waiving the
651 committee's rules, and saying we are going to roll votes so
652 that the chair has more.

653 Nobody is listening to the debates about all of these
654 things because they can go out and come back and vote later
655 in the day uninformed about what they are voting on. That
656 is the benefit of rolling votes, the only one I have been
657 able to decipher. So we have got a problem here, and the
658 problem is not with our substitute as much as it is the rush

659 to judgment on these things that require deliberative,
660 thoughtful consultation with all parties out there.

661 And I guess I should say something about our substitute.
662 It is better than the chairman's substitute. Now, that is
663 not a compelling endorsement to somebody who has cold
664 sponsored something that is better than what we had before
665 us, but at least we are trying to move in the right
666 direction.

667 I can tell the chair that his substitute is better than
668 his original bill. Our substitute, I believe, is better
669 than his substitute. But I am kind of hoping we do not pass
670 any of this stuff and that we go back to the drawing board
671 and try to get this right, and do it in a way that this
672 committee has worked on intellectual properties throughout a
673 long period of time.

674 This should not be partisan. It should not be
675 philosophical. You know, we need to get this right because
676 this is a major segment of our economy. And there are a lot
677 of people out there complaining about it under their breath,
678 or they like their particular part of the bill and hate the
679 rest of the bill, and, you know, so they are kind of

680 captured in this situation.

681 Mr. Chairman, I appreciate the extra time. I yield
682 back. Sorry to express my frustration about it.

683 Chairman Goodlatte. The chair is now pleased to
684 recognize the gentleman from North Carolina, Mr. Coble, for
685 5 minutes.

686 Mr. Coble. Mr. Chairman, I probably will not take 5
687 minutes. For years, Mr. Chairman, I have advocated the
688 PTO's right to retain fees rather than diverting those fees,
689 and I think the gentleman's bill probably addresses that. I
690 can also appreciate your concern, Mr. Chairman, about
691 marking up a clean bill. Otherwise, we assume the risk of
692 maybe losing exclusive jurisdiction over this issue.

693 I would like to, in the alternative, suggest that we in
694 our subcommittee make a high priority of this diversion
695 question, and, Mr. Chairman, I would like to have your
696 support to that end, if I may request that. And having said
697 that, I yield the balance of my time to the chairman.

698 Chairman Goodlatte. Well, the chair thanks the
699 gentleman for yielding. I just want to say to my good
700 friend from North Carolina, both of my good friends from

701 North Carolina, but particularly the one to my left, that
702 this is not a rush to judgment. And this is an issue, a
703 series of issues, that have been examined by this committee
704 for a decade or more. And during the course of this year,
705 we have been very transparent with regard to this process.
706 A discussion draft of this bill was made available to
707 everyone in the world in May of this year. We received a
708 lot input from that. A second discussion draft was released
709 in September of this year. We received a lot less
710 discussion about that draft.

711 We introduced the bill well over a month ago, and we
712 have received discussion regarding the bill language from a
713 great many people. A number of hearings have been held both
714 before and after the bill was introduced, and there has been
715 a lot of opportunity for people to examine this. I would
716 assure the gentleman, however, that no matter what date we
717 have set, this would continue to be examined, and examined,
718 and examined.

719 So we want to make sure that everybody has the full
720 opportunity to be heard on this legislation, and we have
721 worked in as bipartisan a fashion as we possibly can. But

722 we want not only the legislation to be bipartisan, but also
723 the process. And in that regard, because of the comments
724 made by the gentleman regarding the rolling of votes, we
725 will, when we reach the conclusion of the debate on this and
726 it is put to a vote, we will then see if there is a recorded
727 vote requested, and we will then recess rather than roll the
728 vote so we do not go any further into the time allotted
729 here.

730 However, I do want to again suggest that this is going
731 to be a long day, and we want it to be a long day to the
732 extent that people have amendments they want to offer and
733 have substantive debate of those amendments. But we also
734 want to keep the process moving forward as expeditiously as
735 possible.

736 Mr. Coble. Mr. Chairman?

737 Chairman Goodlatte. For what purpose does -- I yield
738 back to the gentleman.

739 Mr. Coble. I would like to reclaim my time and ask the
740 chairman can we expect your support in making this a high
741 priority issue in our subcommittee?

742 Chairman Goodlatte. Oh, we definitely will do that. We

743 have, and we will continue to do so.

744 Mr. Watt. Will the gentleman from North Carolina yield?

745 Mr. Coble. Yes, sir.

746 Mr. Watt. And if we address it in our subcommittee,
747 will it be any less subject to a point of order on the
748 floor?

749 Mr. Coble. Well, I am not sure I am qualified. That
750 may be over my pay grade.

751 Mr. Watt. I think the chairman can answer that
752 question. It would be subject to the point of order on the
753 floor if we address it in our subcommittee as it would be if
754 we put it in our substitute as it is.

755 Mr. Coble. Well, I --

756 Mr. Watt. There is universal agreement --

757 Chairman Goodlatte. Would the gentleman yield?

758 Mr. Watt. -- about that.

759 Mr. Coble. I still have the time. I will yield to the
760 chairman.

761 Chairman Goodlatte. I thank the gentleman for yielding.
762 Well, the gentleman is perfectly correct that we have to
763 find a way forward on that issue. But given that that is

764 not the exclusive jurisdiction of this committee and the
765 other matters under consideration are, a great many of us,
766 again on both sides of the aisle, do not feel that it is
767 appropriate to hold up the process of the issues that are
768 not subject to other committees' jurisdiction while we take
769 the time to work with those committees to make sure that the
770 intent of this committee in the America Invents Act, in
771 fact, the longstanding intent of this committee to make sure
772 that fees paid by inventors to the Patent Office for the
773 processing of their patent claims, are not diverted for
774 other purposes.

775 I think that there is very, very strong support in this
776 committee for that, and I think there is strong support
777 elsewhere as well. But we do not have the ability to
778 dictate what happens elsewhere from this committee, and that
779 is why we object to including it in this legislation. And I
780 yield back to the gentleman from North Carolina.

781 Mr. Coble. I reclaim and yield back.

782 Chairman Goodlatte. Who seeks time?

783 The question occurs on the amendment offered by the
784 gentleman from Michigan.

785 All those in favor, respond by saying aye.

786 Those opposed, no.

787 In the opinion of the chair, the noes have it.

788 Mr. Conyers. Mr. Chair, I ask for a record vote, sir.

789 Chairman Goodlatte. The gentleman asks for a record
790 vote, and in recognition of what I had just said and the
791 concern raised by the gentleman from North Carolina, the
792 committee will stand in recess until 1:00 p.m., at which
793 time we will have that record vote.

794 [Recess.]

795 Chairman Goodlatte. The committee will reconvene. When
796 the committee recessed, we were at the point of
797 consideration of the substitute amendment offered by the
798 gentleman from Michigan, and the chair had ruled that the
799 nays had it on the amendment.

800 The gentleman from Michigan requested that the roll be
801 called, and the clerk will now call the roll.

802 Ms. Deterding. Mr. Goodlatte?

803 Chairman Goodlatte. No.

804 Ms. Deterding. Mr. Goodlatte votes no.

805 Mr. Sensenbrenner?

806 [No response.]

807 Ms. Deterding. Mr. Coble?

808 [No response.]

809 Ms. Deterding. Mr. Smith of Texas?

810 [No response.]

811 Ms. Deterding. Mr. Chabot?

812 [No response.]

813 Ms. Deterding. Mr. Bachus?

814 Mr. Bachus. No.

815 Ms. Deterding. Mr. Bachus votes no.

816 Mr. Issa?

817 Mr. Issa. No.

818 Ms. Deterding. Mr. Issa votes no.

819 Mr. Forbes?

820 Mr. Forbes. No.

821 Ms. Deterding. Mr. Forbes votes no.

822 Mr. King?

823 [No response.]

824 Ms. Deterding. Mr. Franks?

825 Mr. Franks. No.

826 Ms. Deterding. Mr. Franks votes no.

827 Mr. Gohmert?

828 Mr. Gohmert. No.

829 Ms. Deterding. Mr. Gohmert votes no.

830 Mr. Jordan?

831 [No response.]

832 Ms. Deterding. Mr. Poe?

833 [No response.]

834 Ms. Deterding. Mr. Chaffetz?

835 Mr. Chaffetz. No.

836 Ms. Deterding. Mr. Chaffetz votes no.

837 Mr. Marino?

838 Mr. Marino. No.

839 Ms. Deterding. Mr. Marino votes no.

840 Mr. Gowdy?

841 Mr. Gowdy. No.

842 Ms. Deterding. Mr. Gowdy votes no.

843 Mr. Amodei?

844 Mr. Amodei. No.

845 Ms. Deterding. Mr. Amodei votes no.

846 Mr. Labrador?

847 Mr. Labrador. No.

848 Ms. Deterding. Mr. Labrador votes no.
849 Mr. Farenthold?
850 Mr. Farenthold. No.
851 Ms. Deterding. Mr. Farenthold votes no.
852 Mr. Holding?
853 Mr. Holding. No.
854 Ms. Deterding. Mr. Holding votes no.
855 Mr. Collins?
856 [No response.]
857 Ms. Deterding. Mr. DeSantis?
858 [No response.]
859 Ms. Deterding. Mr. Smith of Missouri?
860 Mr. Smith of Missouri. No.
861 Ms. Deterding. Mr. Smith of Missouri votes no.
862 Mr. Conyers?
863 Mr. Conyers. Aye.
864 Ms. Deterding. Mr. Conyers votes aye.
865 Mr. Nadler?
866 Mr. Nadler. Aye.
867 Ms. Deterding. Mr. Nadler votes aye.
868 Mr. Scott?

869 Mr. Scott. Aye.

870 Ms. Deterding. Mr. Scott votes aye.

871 Mr. Watt?

872 Mr. Watt. Aye.

873 Ms. Deterding. Mr. Watt votes aye.

874 Ms. Lofgren?

875 Ms. Lofgren. No.

876 Ms. Deterding. Ms. Lofgren votes no.

877 Ms. Jackson Lee?

878 Ms. Jackson Lee. Aye.

879 Ms. Deterding. Ms. Jackson Lee votes aye.

880 Mr. Cohen?

881 Mr. Cohen. Aye.

882 Ms. Deterding. Mr. Cohen votes aye.

883 Mr. Johnson?

884 Mr. Johnson. Aye.

885 Ms. Deterding. Mr. Johnson votes aye.

886 Mr. Pierluisi?

887 Mr. Pierluisi. No.

888 Ms. Deterding. Mr. Pierluisi votes no.

889 Ms. Chu?

890 Ms. Chu. Aye.

891 Ms. Deterding. Ms. Chu votes aye.

892 Mr. Deutch?

893 Mr. Deutch. Aye.

894 Ms. Deterding. Mr. Deutch votes aye.

895 Mr. Gutierrez?

896 Mr. Gutierrez. Aye.

897 Ms. Deterding. Mr. Gutierrez votes aye.

898 Ms. Bass?

899 Ms. Bass. Aye.

900 Ms. Deterding. Ms. Bass votes aye.

901 Mr. Richmond?

902 Mr. Richmond. Yes.

903 Ms. Deterding. Mr. Richmond votes aye.

904 Ms. DelBene?

905 Ms. DelBene. No.

906 Ms. Deterding. Ms. DelBene votes no.

907 Mr. Garcia?

908 Mr. Garcia. Aye.

909 Ms. Deterding. Mr. Garcia votes aye.

910 Mr. Jeffries?

911 Mr. Jeffries. Aye.

912 Ms. Deterding. Mr. Jeffries votes aye.

913 Mr. Coble. Mr. Chairman?

914 Chairman Goodlatte. The gentleman from North Carolina,

915 Mr. Coble?

916 Mr. Coble. No.

917 Ms. Deterding. Mr. Coble votes no.

918 Chairman Goodlatte. Are there other Members who wish to

919 vote and have not voted?

920 Mr. Jordan, the gentleman from Ohio?

921 Mr. Jordan. No.

922 Ms. Deterding. Mr. Jordan votes no.

923 Chairman Goodlatte. The clerk will report.

924 Ms. Deterding. Mr. Chairman, 14 Members voted aye; 19

925 Members voted nay.

926 Chairman Goodlatte. And the amendment is not agreed to.

927 Mr. Issa. Mr. Chairman?

928 Chairman Goodlatte. The chair was going to go to the

929 gentleman from Utah next.

930 Mr. Issa. I would be pleased to have you go to him.

931 Chairman Goodlatte. The chair would request of the

932 gentleman from Utah what purpose he seeks recognition?

933 Mr. Chaffetz. Mr. Chairman, I have an amendment at the
934 desk.

935 Chairman Goodlatte. The clerk will report the
936 amendment.

937 Ms. Deterding. Amendment to the amendment in the nature
938 of a substitute to H.R. 3309, offered by Mr. Chaffetz of
939 Utah. In Section 3, add the following at the end --

940 Chairman Goodlatte. Without objection, the amendment is
941 considered as read.

942 [The amendment of Mr. Chaffetz follows:]

943

944 Chairman Goodlatte. And the gentleman is recognized for
945 5 minutes on his amendment.

946 Mr. Chaffetz. I thank the chairman.

947 And I appreciate the bipartisan support in which you
948 have been working. There are several members on both sides
949 of the aisle that I have been working with. We want to help
950 tackle an issue dealing with demand letters.

951 I particularly want to thank Congressman DeFazio for his
952 work. We had introduced the SHIELD Act, and many of the
953 points from that have been incorporated into this bill, of
954 which I am very much appreciative, Mr. Chairman.

955 I also want to thank Mr. Deutch and Mr. Bachus for
956 working with us on this issue, and we do this jointly here.

957 As you know, Mr. Chairman, 55 percent of troll suits
958 involve companies with annual revenues of \$10 million or
959 less. To suggest that this is just a problem with big
960 companies would be inaccurate. They are harming small
961 companies, and it is a pretty stunning stat in my book.

962 Fifty-five percent of troll suits involve companies with
963 annual revenues of \$10 million or less. Patent trolls are
964 filing four times as many cases as they did in 2005, and

965 they account for about roughly 61 percent of all patent
966 litigation.

967 As you know, Mr. Chairman, even a single abusive letter,
968 demand letter sent to a small business carries with it real
969 consequences of shutting the business down and creating
970 uncertainty in their future. An abusive demand letter
971 differs substantially from the legitimate licensing request
972 made by a legitimate business holding a valid patent. We
973 think we can help fix the abusive demand letters without
974 disrupting legitimate monetization of valid patents.

975 The demand letters frequently lack enough information
976 for the recipient to evaluate whether the demand is
977 legitimate, and the recipient business quickly learns that
978 hiring a patent lawyer to evaluate and fight back against
979 the baseless infringement assertion will cost at least
980 several thousand dollars.

981 The demand letters threaten litigation if recipients
982 don't settle, and often the demand letters threaten to
983 increase settlement costs if the defendant hires a lawyer or
984 fights back, all while never explaining exactly how the
985 company has infringed the patent.

986 Now there is still a First Amendment concern, but we
987 still have to address this. Small business victims of
988 abusive demand letters generally do not have in-house
989 counsel to evaluate the merits of demand letters at a
990 reasonable cost and cannot to fight a lengthy court battle.
991 Thus, they are ripe targets for trolls armed with
992 disingenuous and threatening demand letters. It is
993 happening every day across the country.

994 Demand letter reform is not attacking the patent system
995 or changing the standards of patentability or infringement.
996 Rather, it will protect companies from abuse and enable
997 small companies to respond collectively to patent trolls'
998 extortionist-type practices.

999 Now within this amendment, we offer a sense of Congress,
1000 which sends a strong message that Congress considers it an
1001 abuse to the patent system and against public policy for a
1002 party to send out a purposefully evasive demand letter. And
1003 I am committed to working with the chairman and other
1004 interested parties that are here today to add additional
1005 teeth to this amendment as we move toward the floor.

1006 On the demand letters, the willful infringement, as you

1007 know, carries with it increased penalties. The amendment
1008 states that the claimant seeking to establish willful
1009 infringement may not rely on the fact that they simply sent
1010 a purposefully evasive demand letter as evidence of a pre-
1011 suit notification of infringement. Only letters that
1012 include the minimum following criteria will be considered
1013 evidence in a pre-suit notification -- the asserted patent,
1014 the product or process of the accused infringement, and how
1015 the product or process infringes one or more of the claims.

1016 I would also remind the committee that identical
1017 language to Senate bill 23, as introduced in the America
1018 Invents Act in 2011, is used in this amendment as well.

1019 So, Mr. Chairman, I think this is an appropriate
1020 amendment to an otherwise very fine bill. I would encourage
1021 my colleagues to support it.

1022 I again appreciate Mr. Deutch in particular working with
1023 us on this, as well as Mr. Bachus. And with that, I will
1024 yield back.

1025 Chairman Goodlatte. For what purpose does the gentleman
1026 from Florida seek recognition?

1027 Mr. Deutch. Move to strike the last word.

1028 Chairman Goodlatte. The gentleman is recognized for 5
1029 minutes.

1030 Mr. Deutch. Thank you, Mr. Chairman.

1031 Mr. Chairman, I am so happy to be working with my
1032 colleague Mr. Chaffetz on this amendment. It is a fine
1033 example of working together to solve a problem that, as my
1034 colleague has pointed out, is really hurting small
1035 businesses throughout the country.

1036 I won't repeat Mr. Chaffetz's description, but I do want
1037 to add that Subsection (g) represents an important and
1038 eminently fair change, requiring that you clearly explain
1039 what your patent does and how you think it is being
1040 infringed when you give pre-suit notice of infringement. It
1041 is just common sense that before you can claim willful
1042 infringement, you should have provided some basic
1043 information to the alleged infringer.

1044 This language will ensure that a standard is set for
1045 that information without adding burdensome requirements for
1046 a patent holder that would stand in the way of legitimate
1047 claims.

1048 I have some additional language on this issue. I think

1049 there is room to make the existing notice requirements even
1050 more useful. I hope that the chairman will be willing to
1051 continue discussions on that even after mark-up. But I do
1052 think that this amendment for us now would make a
1053 significant and worthwhile change.

1054 I urge my colleagues to support it, and I yield back.

1055 Mr. Conyers. Mr. Chairman?

1056 Chairman Goodlatte. The chair will recognize himself,
1057 and I want to commend both the gentleman from Utah and the
1058 gentleman from Florida and several other members of the
1059 committee who have worked together on this amendment, and I
1060 support it.

1061 The amendment provides a clear statement from Congress
1062 on the abusive nature of purposefully evasive demand letters
1063 to end-users. I believe that Congress has not spoken
1064 clearly on this issue in the past, and this amendment does
1065 exactly that.

1066 Additionally, the amendment includes a provision that is
1067 identical to the one that was included in the introduced
1068 version of S. 23, the America Invents Act in 2011. That
1069 provision was widely and thoroughly vetted at the time and

1070 had received support from the various traditional patent
1071 stakeholders that represent a broad range of industries and
1072 groups.

1073 This amendment, as a whole, reflects sound policy. It
1074 comports with the First Amendment. It does not create undue
1075 burdens on the free markets and business communications, and
1076 I support its inclusion in the Innovation Act.

1077 But as we work towards the floor, I will work with the
1078 gentleman from Utah and the gentleman from Florida,
1079 stakeholders, and others as the process continues to make
1080 necessary improvements to ensure that the provision can be
1081 properly complied with and does not interfere with normal
1082 business communications.

1083 The chair is happy to recognize the gentleman from
1084 Michigan, Mr. Conyers.

1085 Mr. Conyers. Thank you, Mr. Chairman.

1086 Members of the committee, we are all endeavoring to
1087 decrease patent litigation abuse, but we should be careful
1088 about what we deem is an unfair and deceptive approach. The
1089 sense of Congress is an insufficient approach.

1090 The amendment to me seems to punish plaintiffs by

1091 preventing them from enhanced damages for willful
1092 infringement when they may not know all of the details of
1093 how the defendant infringes the patent. Our substitute
1094 amendment offered a better approach. In it, we required a
1095 study of the widespread use of deceptive demand letters,
1096 which has not happened yet.

1097 That study would result in concrete, effective, and
1098 measured solutions to address abusive patent litigation.
1099 Please join me in opposing this amendment.

1100 And I yield back the balance of my time.

1101 Chairman Goodlatte. The chair thanks the gentleman.

1102 It is the intention of the chair to proceed to a vote
1103 before we go to the floor for votes. However, if there are
1104 further Members who wish to speak on the amendment, we will
1105 hear from one more, and then we will have the vote after.

1106 Is anyone seeking recognition? The gentleman from
1107 Alabama, Mr. Bachus, is recognized for 5 minutes.

1108 Mr. Bachus. I rise in support of this amendment. The
1109 lack of specificity in these demand letters is an outrage.
1110 And I just want to -- and I am going to introduce for the
1111 record two of them that one small company in California

1112 received, with less than 100 employees.

1113 And here is -- and I am going to actually read, and I am
1114 going to submit my whole statement in the record.

1115 "Please be advised that your company is using automatic
1116 scrolling technology on your Web site." And then it says,
1117 "The following link to FindTheBest" -- and that is the
1118 company - "findthebest.com home page shows the
1119 infringement." And it refers you to that small company's
1120 Web site.

1121 So it says you are using automatic scrolling on your Web
1122 site, and to see what the violation is, go to your own Web
1123 site.

1124 And this gentleman actually came by my office and gave
1125 me these two letters. And he had to hire attorneys to spend
1126 tens of thousands of dollars in defending himself, and these
1127 are being received all over the country. It is just
1128 ridiculous.

1129 And so, I commend the gentleman for -- but I am going to
1130 -- I am just going to introduce my statement because of the
1131 activity on the floor.

1132 Chairman Goodlatte. The gentleman's statement will be

1133 made a part of the record.

1134 [The information follows:]

1135

1136 Chairman Goodlatte. For what purpose does the gentleman
1137 from Tennessee seek recognition?

1138 Mr. Cohen. Thank you, Mr. Chairman.

1139 Just to proudly join Mr. Bachus, the most bipartisan
1140 member of this committee, and joining on this particular
1141 amendment.

1142 Chairman Goodlatte. For what purpose does the
1143 gentlewoman from Texas seek recognition?

1144 Ms. Jackson Lee. Well, I want to make two points.

1145 Chairman Goodlatte. The gentlewoman is recognized.

1146 Ms. Jackson Lee. Strike the last word.

1147 Briefly to indicate that if we read Mr. Conyers'
1148 substitute, we would find a strong response to this issue.
1149 It is a very important issue. This is a sense of Congress.
1150 I think they complement the substitute, and I think we went
1151 through this in the previous legislation. We are very
1152 concerned about the small entities that would be impacted in
1153 a heavy-handed manner.

1154 That we believe -- I believe that everyone has a right
1155 to petition the court, but I am sympathetic to the small
1156 entities and end-users that, frankly, may have made a

1157 mistake, may not know. And the demand letters are certainly
1158 both frightening and threatening and certainly impact their
1159 bottom line.

1160 So I want to thank the gentleman for this approach, and
1161 I yield back.

1162 Chairman Goodlatte. The chair thanks the gentlewoman.

1163 Perhaps we can get a vote. Are there any other
1164 requests?

1165 [No response.]

1166 Chairman Goodlatte. If not, the question occurs on the
1167 amendment offered by the gentleman from Utah.

1168 All those in favor, respond by saying aye.

1169 Those opposed, no.

1170 In the opinion of the chair, the ayes have it, and the
1171 amendment is agreed to.

1172 And the committee will stand in recess, and we will
1173 resume business immediately after this series of votes.

1174 [Recess.]

1175 Chairman Goodlatte. The committee will reconvene.

1176 Mr. Conyers. Mr. Chairman?

1177 Chairman Goodlatte. For what purpose does the gentleman

1178 from Michigan seek recognition?

1179 Mr. Conyers. I have an amendment at the desk and ask
1180 that it be called up.

1181 Chairman Goodlatte. The clerk will report the
1182 amendment.

1183 Ms. Deterding. Amendment to the amendment in the nature
1184 of a substitute to H.R. 3309, offered by Mr. Conyers and Mr.
1185 Watt.

1186 Mr. Conyers. I ask unanimous consent that the reading
1187 be dispensed with and --

1188 Chairman Goodlatte. Without objection, so ordered.

1189 [The amendment of Mr. Conyers follows:]

1190

1191 Chairman Goodlatte. The gentleman is recognized for 5
1192 minutes on his amendment.

1193 Mr. Conyers. Thank you, Chairman Goodlatte.

1194 The gentleman from North Carolina, Mr. Watt, and I are
1195 offering this amendment to allow a straight up and down vote
1196 on the single most important problem facing our patent
1197 system today, the continuing diversion of patent fees.

1198 The current funding mechanism has failed the patent
1199 system, permitting the diversion of nearly \$150 million in
1200 collected user fees in Fiscal Year 2013 alone, and this loss
1201 is on top of the estimated \$1 billion in fees diverted over
1202 the last two decades.

1203 In essence, there is a tax on innovation in this
1204 country, and the purpose of this amendment would be to end
1205 it. We were promised the fee diversion would end when
1206 Congress passed the America Invents Act two years ago,
1207 remember? But that has not been the case. It is now clear
1208 that a statutory fix is the only true viable solution.

1209 I would like to address and respectfully disagree with
1210 the various jurisdictional concerns that have been raised
1211 when this issue was considered as part of the Democratic

1212 substitute.

1213 First, it is correct that the language could be subject
1214 to a Rule 21 point of order on the House floor. However,
1215 that doesn't mean a point of order can or will be raised.
1216 If the bill proceeds under the suspension of the rules, of
1217 course, all points of order are waived.

1218 Alternatively, if the bill was to proceed subject to a
1219 rule, the Rules Committee can typically and frequently does
1220 waive all points of order. That decision will be made by
1221 the House leadership, and I would suggest that the
1222 individuals in this room could make a very strong case that
1223 any point of order should be waived.

1224 In any event, the worst that could happen if a point of
1225 order is raised and upheld is that the language could be
1226 dropped from the bill. This wouldn't delay consideration of
1227 the legislation, and we would be no worse off than we are
1228 right now.

1229 Second, I appreciate my friend Mr. Coble's offer to hold
1230 a hearing in the subcommittee on fee diversion. However,
1231 the time and place to deal with this very serious problem is
1232 now in bills being considered in the House and Senate, not

1233 at some undetermined time and in some undetermined vehicle.

1234 Finally, contrary to assertions to the contrary, the
1235 addition of our amendment would not lead to a sequential
1236 referral to the Ways and Means Committee, nor to any other
1237 committee, and I say this because the amendment is identical
1238 to the language of our bill, H.R. 3349, and that bill was
1239 solely referred to the House Judiciary Committee.

1240 We have also spoken with the House Parliamentarian to
1241 confirm these matters.

1242 And so I urge my colleagues to support this commonsense
1243 amendment to repeal the innovation tax.

1244 Ms. Lofgren. Would the gentleman yield?

1245 Mr. Conyers. Of course.

1246 Ms. Lofgren. I just want to thank you, Mr. Conyers, for
1247 offering this amendment, which I think is very much needed.

1248 I was so disappointed when we changed this provision
1249 relative to the tax on innovation when the America Invents
1250 Act was up. And although we were assured that there would
1251 be no diversion, in fact within a month there was diversion
1252 of funds, and I just want to tell a quick story.

1253 As members know, the America Invents Act provided for

1254 satellite offices of the PTO, and one of those satellite
1255 offices was to be in Silicon Valley. Well, because of the
1256 sequester and because of the diversion of funds, there
1257 wasn't any money to open the office.

1258 Now, the good news is we are opening the office. How?
1259 Because we got a donation of space from the City of San
1260 Jose, and the State of California donated to the Federal
1261 Government half-a-million dollars.

1262 So that is the situation. California and the City of
1263 San Jose is donating to the Federal Government to do
1264 something that is our core responsibility and that inventors
1265 have already paid for through their fees.

1266 So I agree with the gentleman's procedural arguments,
1267 and on the substance I think this is extremely important,
1268 and I hope that members will vote for it as Mr. Conyers has
1269 outlined.

1270 And with that, I yield back and I thank the gentleman
1271 for yielding.

1272 Mr. Conyers. Mr. Chairman, I yield back the balance of
1273 my time.

1274 Chairman Goodlatte. The chair thanks the gentleman, and

1275 the chair recognizes himself, and I must oppose the
1276 amendment.

1277 While I agree with the basic policy, I agree with the
1278 example cited by the gentlewoman from California and other
1279 evidence that funds that should be made available are not
1280 being made available because of the impact of sequestration,
1281 in this case when the intent, when we did the America
1282 Invents Act, was to end that kind of diversion of fees,
1283 nonetheless it would have the effect of becoming a poison
1284 pill to the bill if we try to move it to the House floor.
1285 Adopting this amendment would cause a point of order under
1286 House Rule 21 to lie against the bill on the House floor.

1287 This rule prohibits the committee, other than the
1288 Appropriations Committee, from reporting a bill carrying an
1289 appropriation. The rule also prohibits a committee other
1290 than the Ways and Means Committee from reporting a bill
1291 containing a tax or tariff.

1292 I fully understand the frustration of the members on
1293 this panel who are concerned about the fact that the PTO
1294 does not enjoy the full use of fees collected, and I share
1295 their concern. However, if we are going to address other

1296 pressing problems facing the patent system related to
1297 litigation, we must defeat this amendment so that the bill
1298 may proceed to the floor of the House unencumbered.

1299 Who seeks time?

1300 The gentleman from New York. Do you seek recognition?

1301 Mr. Nadler. Thank you, Mr. Chairman. Mr. Chairman, I
1302 rise in support of the amendment.

1303 Chairman Goodlatte. The gentleman is recognized for 5
1304 minutes.

1305 Mr. Nadler. Thank you. I will be very brief.

1306 This amendment is probably as important as anything else
1307 in the bill. The biggest problem we have with all the other
1308 things the bill seeks to address are the poor quality of
1309 patents that get approved. If the Patent Office had the
1310 funds to properly examine all the patent applications and we
1311 didn't have so many poor patents out there, you wouldn't
1312 have much of the problem that we have, and everything else
1313 that we are doing would be less necessary.

1314 So I strongly urge adoption of the amendment. And let
1315 me just say again, if it is a Rule 21 violation, it may be
1316 that no one will raise the point of order on the floor. And

1317 if someone doesn't, then this is not an obstacle. And if
1318 someone does, we can seek to cure it at that point.

1319 So I urge that we not ignore the largest single problem
1320 that we have to deal with in terms of what we are dealing
1321 with today, and with that I will yield to the gentleman from
1322 Virginia.

1323 Mr. Scott. Thank you.

1324 Mr. Chairman, I ask unanimous consent that a statement
1325 from the gentleman from North Carolina, Mr. Watt, in support
1326 of the amendment be entered into the record.

1327 Chairman Goodlatte. Without objection, it will be made
1328 a part of the record.

1329 [The information follows:]

1330

1331 Mr. Nadler. I yield back.

1332 Ms. DelBene. Mr. Chair?

1333 Chairman Goodlatte. For what purpose does the
1334 gentlewoman from Washington seek recognition?

1335 Ms. DelBene. Move to strike the last word.

1336 Chairman Goodlatte. The gentlewoman is recognized.

1337 Ms. DelBene. Thank you, Mr. Chair.

1338 I wholeheartedly support this amendment, as I am a co-
1339 sponsor for the legislation that Ranking Member Conyers and
1340 Ranking Member Watt and Representatives Issa and Collins
1341 recently introduced that would ensure full PTO funding.

1342 Members of this committee can all agree that IP is
1343 important to this nation's economy, from large businesses to
1344 small garage inventors, and the PTO's ability to contribute
1345 to a strong patent system is a critical part of our nation's
1346 leadership in innovation.

1347 So if this committee does not take a strong stance in
1348 support of full funding of the PTO, we will fall short of
1349 making this bill the strongest bill possible to advance our
1350 shared goal of strengthening and improving our patent
1351 system.

1352 But more generally, I also want to thank Chairman
1353 Goodlatte and Ranking Member Conyers, as well as the IP's
1354 subcommittee leadership, Representatives Coble and Watt, for
1355 working since the beginning of this year to examine issues
1356 around abuse of patent litigation. It is clear from this
1357 examination there is a need for legislative action.

1358 And, Mr. Chairman, I support your manager's amendment,
1359 and thank you for all the progress we have made so far,
1360 especially your willingness to remove the Covered Business
1361 Method Program expansion provision.

1362 I would like to thank Representative Collins for working
1363 with me on this issue.

1364 Mr. Chairman, I know that you have heard a range of
1365 concerns with the bill, and while I support the manager's
1366 amendment, I think there continues to be room to improve the
1367 bill in a number of areas, including on this issue of PTO
1368 funding.

1369 For example, if there are bad actors taking egregious
1370 actions in patent litigation, there should be consequences,
1371 and I understand fee shifting can be a tool to deter this
1372 kind of behavior. The challenge will be in crafting

1373 legislative language that accomplishes this in a way that
1374 does not create unintended consequences for small patent-
1375 dependent startups or individual inventors with legitimate
1376 claims. If we do not work towards a more balanced change to
1377 the current fee shifting standard than the language
1378 currently in the manager's amendment, we risk placing an
1379 unfair burden on early-stage capital-constrained companies
1380 when attempting to enforce a patent claim against a party
1381 that is in a more advantageous economic situation.

1382 This concern is shared by diverse stakeholders who rely
1383 on a strong system of patent enforcement, from the National
1384 Venture Capital Association to the American Association for
1385 Justice.

1386 There is also a strong consensus on the need to provide
1387 relief to customers of products that have been subject to
1388 frivolous litigation. I strongly support this provision but
1389 believe that changes may help to ensure it achieves the
1390 desired intent.

1391 And finally, I support making sure that the focus in
1392 this bill remains focused squarely on curbing abusive
1393 litigation practices and strengthening our patent system.

1394 For example, I don't believe the repeal of Section 145
1395 belongs in this bill. If an inventor wants to take an
1396 action in district court to obtain a patent after an adverse
1397 result from the PTO, that option should remain available. I
1398 don't believe that taking away this option advances the goal
1399 of the bill.

1400 But in summary, Mr. Chair, I am pleased to be able to
1401 work with you on this legislation. I support your amendment
1402 but also ask you to continue to work in a bipartisan fashion
1403 on improvements to this bill as it moves through the
1404 process. I look forward to working with you, and I yield
1405 back my time.

1406 Chairman Goodlatte. The chair thanks the gentlewoman
1407 for her comments.

1408 For what purpose does the gentleman from Texas seek
1409 recognition?

1410 Mr. Smith of Texas. Thank you, Mr. Chairman. I just
1411 want to say very briefly that one reason to oppose this
1412 amendment is because it does raise a point of order on the
1413 floor. So it seems to me that unless you want to kill the
1414 whole bill, you would oppose this amendment.

1415 Now, you, Mr. Chairman, have generously offered to work
1416 with those who have questions, and I think that would be the
1417 best way for those who offer this amendment to proceed,
1418 rather than pursuing a course that will lead to negative
1419 consequences on the House floor. So I oppose this
1420 amendment.

1421 Chairman Goodlatte. Would the gentleman yield?

1422 Mr. Smith of Texas. I would be happy to yield to the
1423 chairman.

1424 Chairman Goodlatte. I thank the gentleman for yielding.

1425 I want to say to the members on the other side of the
1426 aisle who have worked so hard to get this bill to this
1427 point, and who share my concern and have expressed their
1428 concern about fee diversion, which I think is
1429 unconscionable, we have the same objective, the same goal,
1430 but we cannot accomplish it through this bill.

1431 The bill will be subject to a Rule 21 point of order,
1432 and we have already been advised that the other committees
1433 who have a philosophical difference of opinion about how to
1434 manage those fees will exercise that point of order, and
1435 therefore it would endanger the bill and I believe would

1436 prevent the bill from getting to the floor of the House if
1437 this provision is contained in it.

1438 And for that reason, I have to continue my objection to
1439 the amendment however much I agree in spirit with its
1440 purpose and will, as I have already done, commit to continue
1441 to work to find a way to force this issue.

1442 The question occurs on the amendment offered by the
1443 gentleman from Michigan.

1444 All those in favor, respond by saying aye.

1445 Those opposed, no.

1446 In the opinion of the chair, the noes have it.

1447 Mr. Conyers. I request a recorded vote, sir.

1448 Chairman Goodlatte. A recorded vote is requested, and
1449 the clerk will call the roll.

1450 Ms. Deterding. Mr. Goodlatte?

1451 Chairman Goodlatte. No.

1452 Ms. Deterding. Mr. Goodlatte votes no.

1453 Mr. Sensenbrenner?

1454 [No response.]

1455 Ms. Deterding. Mr. Coble?

1456 [No response.]

1457 Ms. Deterding. Mr. Smith of Texas?

1458 Mr. Smith of Texas. No.

1459 Ms. Deterding. Mr. Smith of Texas votes no.

1460 Mr. Chabot?

1461 [No response.]

1462 Ms. Deterding. Mr. Bachus?

1463 [No response.]

1464 Ms. Deterding. Mr. Issa?

1465 [No response.]

1466 Ms. Deterding. Mr. Forbes?

1467 [No response.]

1468 Ms. Deterding. Mr. King?

1469 Mr. King. No.

1470 Ms. Deterding. Mr. King votes no.

1471 Mr. Franks?

1472 [No response.]

1473 Ms. Deterding. Mr. Gohmert?

1474 [No response.]

1475 Ms. Deterding. Mr. Jordan?

1476 [No response.]

1477 Ms. Deterding. Mr. Poe?

1478 [No response.]

1479 Ms. Deterding. Mr. Chaffetz?

1480 Mr. Chaffetz. No.

1481 Ms. Deterding. Mr. Chaffetz votes no.

1482 Mr. Marino?

1483 Mr. Marino. No.

1484 Ms. Deterding. Mr. Marino votes no.

1485 Mr. Gowdy?

1486 Mr. Gowdy. No.

1487 Ms. Deterding. Mr. Gowdy votes no.

1488 Mr. Amodei?

1489 Mr. Amodei. No.

1490 Ms. Deterding. Mr. Amodei votes no.

1491 Mr. Labrador?

1492 Mr. Labrador. No.

1493 Ms. Deterding. Mr. Labrador votes no.

1494 Mr. Farenthold?

1495 Mr. Farenthold. No.

1496 Ms. Deterding. Mr. Farenthold votes no.

1497 Mr. Holding?

1498 Mr. Holding. No.

1499 Ms. Deterding. Mr. Holding votes no.
1500 Mr. Collins?
1501 Mr. Collins. No.
1502 Ms. Deterding. Mr. Collins votes no.
1503 Mr. DeSantis?
1504 Mr. DeSantis. No.
1505 Ms. Deterding. Mr. DeSantis votes no.
1506 Mr. Smith of Missouri?
1507 Mr. Smith of Missouri. No.
1508 Ms. Deterding. Mr. Smith of Missouri votes no.
1509 Mr. Conyers?
1510 Mr. Conyers. Aye.
1511 Ms. Deterding. Mr. Conyers votes aye.
1512 Mr. Nadler?
1513 Mr. Nadler. Aye.
1514 Ms. Deterding. Mr. Nadler votes aye.
1515 Mr. Scott?
1516 Mr. Scott. Aye.
1517 Ms. Deterding. Mr. Scott votes aye.
1518 Mr. Watt?
1519 [No response.]

1520 Ms. Deterding. Ms. Lofgren?

1521 Ms. Lofgren. Aye.

1522 Ms. Deterding. Ms. Lofgren votes aye.

1523 Ms. Jackson Lee?

1524 Ms. Jackson Lee. Aye.

1525 Ms. Deterding. Ms. Jackson Lee votes aye.

1526 Mr. Cohen?

1527 [No response.]

1528 Ms. Deterding. Mr. Johnson?

1529 [No response.]

1530 Ms. Deterding. Mr. Pierluisi?

1531 Mr. Pierluisi. Aye.

1532 Ms. Deterding. Mr. Pierluisi votes aye.

1533 Ms. Chu?

1534 Ms. Chu. Aye.

1535 Ms. Deterding. Ms. Chu votes aye.

1536 Mr. Deutch?

1537 Mr. Deutch. Aye.

1538 Ms. Deterding. Mr. Deutch votes aye.

1539 Mr. Gutierrez?

1540 [No response.]

1541 Ms. Deterding. Ms. Bass?

1542 Ms. Bass. Aye.

1543 Ms. Deterding. Ms. Bass votes aye.

1544 Mr. Richmond?

1545 Mr. Richmond. Aye.

1546 Ms. Deterding. Mr. Richmond votes aye.

1547 Ms. DelBene?

1548 Ms. DelBene. Aye.

1549 Ms. Deterding. Ms. DelBene votes aye.

1550 Mr. Garcia?

1551 Mr. Garcia. Aye.

1552 Ms. Deterding. Mr. Garcia votes aye.

1553 Mr. Jeffries?

1554 [No response.]

1555 Chairman Goodlatte. The gentleman from North Carolina.

1556 Mr. Coble. No.

1557 Ms. Deterding. Mr. Coble votes no.

1558 Chairman Goodlatte. The gentleman from Alabama.

1559 Mr. Bachus. No.

1560 Ms. Deterding. Mr. Bachus votes no.

1561 Chairman Goodlatte. The gentleman from California.

1562 Mr. Issa. No.

1563 Ms. Deterding. Mr. Issa votes no.

1564 Chairman Goodlatte. The gentleman from Virginia.

1565 Mr. Forbes. No.

1566 Ms. Deterding. Mr. Forbes votes no.

1567 Chairman Goodlatte. The gentleman from North Carolina.

1568 Mr. Watt. Aye.

1569 Ms. Deterding. Mr. Watt votes aye.

1570 Chairman Goodlatte. Are there other members who wish to

1571 vote who have not voted?

1572 [No response.]

1573 Chairman Goodlatte. The clerk will report.

1574 Ms. Deterding. Mr. Chairman, 13 members voted aye, 17

1575 members voted nay.

1576 Chairman Goodlatte. And the amendment is not agreed to.

1577 For what purpose does the gentleman from Pennsylvania

1578 seek recognition?

1579 Mr. Marino. Mr. Chairman, I have an amendment at the

1580 desk, Marino amendment 44.

1581 Chairman Goodlatte. The clerk will report the

1582 amendment.

1583 Ms. Deterding. Amendment to the amendment in the nature
1584 of a substitute to H.R. 3309 offered by Mr. Marino of
1585 Pennsylvania. Page 13, insert after line 22 the following
1586 new subsection.

1587 Chairman Goodlatte. Without objection, the amendment
1588 will be considered as read.

1589 [The amendment of Mr. Marino follows:]

1590

1591 Chairman Goodlatte. The gentleman from Pennsylvania is
1592 recognized for 5 minutes on his amendment.

1593 Mr. Marino. Thank you, Mr. Chairman.

1594 Mr. Chairman, when it comes to abusive demand letters,
1595 things are very out of balance. One party to the equation
1596 asserts a claim with little to no specificity, and often it
1597 is unclear who owns the patent being asserted or how the
1598 patent was ever allegedly infringed. It is time that the
1599 entities sending out mass mailers asserting patent
1600 infringement do their due diligence, as we expect in just
1601 about every other area of the law.

1602 I have been pleased to work with a colleague across the
1603 aisle, Congressman Jared Polis, to address this issue.
1604 Yesterday we introduced the Demand Letter Transparency Act,
1605 which would put a lot more information about these patent
1606 assertion entities, also known as PAEs or patent trolls, and
1607 their claims at the fingertips of small companies and
1608 retailers who lack the money, time, and resources to fight
1609 the demand letters.

1610 Similar to the key provision in the bill, my amendment
1611 would require an entity sending 20 demand letters or more on

1612 one patent in a year to file information with the U.S.
1613 Patent and Trademark Office, or the USPTO. The information
1614 the entity is required to submit is not unreasonable, as it
1615 is the same information that would be expected in any valid
1616 pleading.

1617 We are simply asking the entity to submit key pieces of
1618 information such as the actual owner of the patent at issue,
1619 as well as whether the patent has been involved in other
1620 litigation.

1621 Mr. Chairman, I will withdraw my amendment today but
1622 hope my colleagues and I can work to strengthen transparency
1623 with demand letters as this bill moves to the floor, and I
1624 yield back.

1625 Chairman Goodlatte. The chair thanks the gentleman, and
1626 without objection, the amendment is withdrawn.

1627 The chair will recognize himself to simply briefly thank
1628 the gentleman for his efforts on demand letters. There are
1629 definitely a lot of people on this committee who would like
1630 to do more in the area of demand letters but because of
1631 jurisdictional concerns, because of First Amendment
1632 concerns, we could not support this amendment but we

1633 definitely look forward to working with the gentleman as we
1634 move to the floor and beyond in terms of finding ways to
1635 strengthen the protections that I think are needed for
1636 people who are the subject of abusive demand letters.

1637 Who seeks recognition?

1638 For what purpose does the gentleman from Virginia seek
1639 recognition?

1640 Mr. Scott. Mr. Chairman, I have an amendment at the
1641 desk, Scott VA 019.

1642 Chairman Goodlatte. The clerk will report the
1643 amendment.

1644 Ms. Deterding. Amendment to the amendment in the nature
1645 of a substitute to H.R. 3309 offered by Mr. Scott of
1646 Virginia. Page 23, strike --

1647 Chairman Goodlatte. Without objection, the amendment
1648 will be considered as read.

1649 [The amendment of Mr. Scott follows:]

1650

1651 Chairman Goodlatte. The gentleman is recognized for 5
1652 minutes on his amendment.

1653 Mr. Scott. Mr. Chairman, Section 6 of the manager's
1654 amendment mandates that the Federal Judiciary change rules
1655 on various matters. Subsection A requires the Judicial
1656 Conference to promulgate rules and procedures involving
1657 discovery. Subsection B requires the Judicial Conference to
1658 develop case management procedures. Subsection C requires
1659 the Supreme Court to eliminate Form 18 and authorizes the
1660 Supreme Court to replace Form 18 with specific minimum
1661 content.

1662 Mr. Chairman, this is particularly concerning to me
1663 because this seems to be an unnecessary imposition on the
1664 independence of the judicial branch of government. In fact,
1665 the Committee on Rules of Practice and Procedure of the
1666 Judicial Conference of the United States wrote a letter
1667 concerning Section 6, and I would like to submit that letter
1668 to the record with unanimous consent.

1669 Chairman Goodlatte. Without objection, the letter will
1670 be made a part of the record.

1671 [The information follows:]

1672

1673 Mr. Scott. First I would like to highlight a few
1674 important portions of the letter. The Judicial Conference
1675 states its appreciation of the desire to improve the civil
1676 justice system by reducing abusive procedural tactics in
1677 patent litigation.

1678 But they note, and I quote, "Legislation that mandates
1679 the content of Federal rules contravenes the longstanding
1680 Judicial Conference policy imposing direct amendments of the
1681 Federal Rules by legislation instead of through the
1682 deliberative process established in the Rules Enabling Act."

1683 The letter goes on to say, "The Congress passed the
1684 Rules Enabling Act to create a thorough and inclusive
1685 process for addressing procedural problems in the Federal
1686 courts. Under that process, the rules committees collect
1687 information that is essential to promulgating effective
1688 rules by commissioning empirical studies, analyzing relevant
1689 case law, and consulting with experts and others with direct
1690 expertise in the area. Proposals for change are published
1691 for public comment and thoroughly analyzed by the Civil
1692 Rules Committee, the Standing Rules Committee, the Judicial
1693 Conference, the Supreme Court, and Congress. This multi-

1694 layered process ensures a thorough evaluation of proposals
1695 by reducing the ever-present risk of unintended
1696 consequences."

1697 The letter goes on to say, "By dictating the outcome of
1698 the Rules Enabling Act process with respect to potential
1699 rules, Section 6 of H.R. 3309 runs counter to that process.
1700 We worry that this kind of approach more often will
1701 undermine rather than further the development of sound rules
1702 and practices. Instead of mandating the outcome of the
1703 rules enabling process, Congress may wish to urge the
1704 Judicial Conference's Rules Committee to study whether
1705 certain rules should be amended to address abusive patent
1706 litigation tactics and/or to implement the provisions of the
1707 Innovation Act. That approach would allow Congress to
1708 express its interest in addressing these problems and would
1709 respect the long established virtues of the deliberative
1710 process created by the Rules Enabling Act."

1711 Mr. Chairman, this amendment creates that urging that
1712 the Judicial Conference has suggested.

1713 The Conference goes on later to point out that the Rules
1714 Enabling Act process has worked well for the last 80 years

1715 or so, and we hope to see this collaborative partnership
1716 continue to work well into the future.

1717 Mr. Chairman, I hope my colleagues will support the
1718 amendment so that we can allow the procedures set forth in
1719 the Rules Enabling Act of 1934 to be fully followed.

1720 Mr. Conyers. Would Mr. Scott yield?

1721 Mr. Scott. I yield.

1722 Mr. Conyers. I want to thank the gentleman for bringing
1723 this issue forward, and I think it will help immeasurably on
1724 the passage of the manager's amendment, and I thank the
1725 gentleman for raising it.

1726 Mr. Scott. Thank you.

1727 Mr. Chairman, I yield back.

1728 Chairman Goodlatte. The chair thanks the gentleman, and
1729 the chair recognizes himself in opposition to the amendment.

1730 This provision is -- Section 6 of the bill is a critical
1731 part of the balance that the Innovation Act strikes between
1732 reigning in patent troll behavior and protecting innovation.
1733 The changes that this amendment offers, by converting all of
1734 Section 6 into a study, would destabilize the careful
1735 balance that supports this bill.

1736 Our provision has been the product of much deliberation
1737 and discussion with stakeholders and the Patent Office, and
1738 good legislative practice prevents us from accepting this
1739 change at this late date.

1740 The Innovation Act recognizes the need to address the
1741 currently lopsided nature of discovery in patent cases. The
1742 high price of defending patent infringement lawsuits is due
1743 in large part to out-of-control discovery costs. Under
1744 current law, even plaintiffs asserting meritless
1745 infringement claims are often allowed to impose expensive
1746 discovery demands on accused infringers even before the
1747 parties know what the patent legally covers.

1748 The Innovation Act devises a solution that would limit
1749 initial discovery to the essential documents that both sides
1750 need in order to litigate their claims and defenses, such as
1751 information about the patent in suit and core technical
1752 documents about the accused devices. Importantly, the
1753 disclosure of any computer code under this proposal would
1754 occur as part of initial discovery only on motion and only
1755 after the production of core documents. This provision will
1756 help the courts to begin to reign in out-of-balance

1757 discovery demands. This provision will curb abusive
1758 requests for email and other electronic documents by setting
1759 time, scope, and numerical limits on electronic discovery.

1760 Under the bill, the parties are also required to
1761 anticipate and propose solutions for potential discovery
1762 abuses in the initial case management report, including
1763 whether an early interpretation of patent claims would
1764 streamline the case. Critically, this provision also
1765 requires that parties who later seek discovery beyond the
1766 core documents should cover the cost of that discovery.
1767 This provision is vital to protecting defendants from
1768 abusive litigation.

1769 Often, those engaged in patent trolling have few, if
1770 any, documents, while defendants have legitimate businesses
1771 with a large number of documents. By forcing defendants to
1772 produce documents, such plaintiffs drive up the cost of
1773 litigation, forcing defendants to settle. This provision
1774 reduces that abuse. If someone really wants additional
1775 discovery, they should understand the cost of that
1776 discovery, and I fear that patent trolls do understand the
1777 cost of discovery and use it to their advantage in forcing

1778 defendants, particularly smaller businesses and individuals,
1779 to seek to settle the case rather than go through these very
1780 extraordinarily expensive litigation costs.

1781 Abusive patent troll litigation strikes at the very
1782 heart of American innovation and job creation. That is why
1783 Congress, the Federal courts, and the PTO must take the
1784 necessary steps to ensure that the patent system lives up to
1785 its constitutional underpinnings. But there are some who
1786 have commented as to whether Congress is even allowed to put
1787 forward legislation to address abusive patent litigation and
1788 must instead defer completely to the courts.

1789 Let me be clear about Congress' constitutional authority
1790 in this area. The Innovation Act puts forward provisions
1791 that are not only in line with Congress' constitutional
1792 authority but with our constitutional duty. And most
1793 recently, in 1992 in Lilly v. Postal Corporation, the U.S.
1794 Supreme Court made clear that Article 1, Section 8, Clause 9
1795 authorizes Congress to establish the lower Federal courts.
1796 From almost the founding of this country, it has been firmly
1797 established that Congress, acting pursuant to its authority
1798 to make all laws necessary and proper to their

1799 establishment, also may enact laws regulating the conduct of
1800 those courts and the means by which their judgments are
1801 enforced.

1802 It is clear that Congress has the authority to regulate
1803 matters of judicial procedure. The Innovation Act
1804 recognizes the need to address the currently lopsided nature
1805 of discovery in patent cases, and we have set in place in
1806 this legislation a process by which we bring this about.
1807 The courts will have a key role in writing and in carrying
1808 out the implementation of key parts of this as well. This
1809 seeks the right balance, and as a result I must oppose the
1810 gentleman's amendment.

1811 For what purpose does the gentleman from North Carolina
1812 seek recognition?

1813 Mr. Watt. Seek to strike the last word.

1814 Chairman Goodlatte. The gentleman is recognized for 5
1815 minutes.

1816 Mr. Watt. Let me yield first to Mr. Scott, and then I
1817 will make a couple of comments.

1818 Mr. Scott. Thank you. I thank the gentleman for
1819 yielding.

1820 Mr. Chairman, obviously I am not questioning Congress'
1821 authority to do this, but the Rules Enabling Act process
1822 provides a deliberative process, working with the Judicial
1823 Conference, that can come up with the rules that everyone
1824 has had an opportunity to comment on. It is published. It
1825 is a deliberative process, and I think it is fair to say it
1826 will come up with a better set of rules.

1827 To the extent that the problems, as the chair has
1828 articulated, exist, those will be considered, and the rules
1829 can take all of them into consideration and produce
1830 excellent rules, rather than the legislative process, where
1831 what you see is what you get.

1832 Thank you, and I yield back.

1833 Mr. Watt. I thank the gentleman for his comments.

1834 I won't prolong this, but I made reference to the
1835 concerns I had about the language in the bill and the
1836 manager's amendment, the manager's substitute or whatever it
1837 is that we are considering, in my opening statement.

1838 I, like Mr. Scott, don't question the authority of this
1839 committee to do whatever it wants. But we have had on the
1840 books the Rules Enabling Act since 1934, and I think we are

1841 setting a very serious negative precedent by starting to
1842 mandate things that are inconsistent with following the
1843 process. Even if it is a good idea, I would think this
1844 would not be the way to do it.

1845 So this is not a debate about whether we have the
1846 authority to do it. I am sure we have the authority to do
1847 it. This is a discussion about whether it is a good idea to
1848 do it. And once you start on that slippery slope, where you
1849 get off, to the extent that we do it in this bill, it is
1850 going to make it easier the next time to say, well, we did
1851 it in a bill already. So this could be the first step
1852 towards doing away with the Rules Enabling Act, and I think
1853 it has served us very well given the people inside the
1854 judicial process who experience these things up close and
1855 personal and input process. I just simply think we are
1856 making a bad judgment to insert ourselves.

1857 So with that, Mr. Chairman, I yield back and urge
1858 support for Mr. Scott's amendment.

1859 Chairman Goodlatte. The question occurs on the
1860 amendment offered by the gentleman from Virginia.

1861 All those in favor, respond by saying aye.

1862 Those opposed, no.

1863 In the opinion of the chair, the noes have it.

1864 The gentleman from Virginia requests a recorded vote,

1865 and the clerk will call the roll.

1866 Ms. Deterding. Mr. Goodlatte?

1867 Chairman Goodlatte. No.

1868 Ms. Deterding. Mr. Goodlatte votes no.

1869 Mr. Sensenbrenner?

1870 [No response.]

1871 Ms. Deterding. Mr. Coble?

1872 [No response.]

1873 Ms. Deterding. Mr. Smith of Texas?

1874 [No response.]

1875 Ms. Deterding. Mr. Chabot?

1876 [No response.]

1877 Ms. Deterding. Mr. Bachus?

1878 [No response.]

1879 Ms. Deterding. Mr. Issa?

1880 [No response.]

1881 Ms. Deterding. Mr. Forbes?

1882 [No response.]

1883 Ms. Deterding. Mr. King?

1884 Mr. King. No.

1885 Ms. Deterding. Mr. King votes no.

1886 Mr. Franks?

1887 [No response.]

1888 Ms. Deterding. Mr. Gohmert?

1889 [No response.]

1890 Ms. Deterding. Mr. Jordan?

1891 Mr. Jordan. No.

1892 Ms. Deterding. Mr. Jordan votes no.

1893 Mr. Poe?

1894 [No response.]

1895 Ms. Deterding. Mr. Chaffetz?

1896 Mr. Chaffetz. No.

1897 Ms. Deterding. Mr. Chaffetz votes no.

1898 Mr. Marino?

1899 Mr. Marino. No.

1900 Ms. Deterding. Mr. Marino votes no.

1901 Mr. Gowdy?

1902 Mr. Gowdy. No.

1903 Ms. Deterding. Mr. Gowdy votes no.

1904 Mr. Amodei?

1905 [No response.]

1906 Ms. Deterding. Mr. Labrador?

1907 Mr. Labrador. No.

1908 Ms. Deterding. Mr. Labrador votes no.

1909 Mr. Farenthold?

1910 [No response.]

1911 Ms. Deterding. Mr. Holding?

1912 Mr. Holding. No.

1913 Ms. Deterding. Mr. Holding votes no.

1914 Mr. Collins?

1915 Mr. Collins. No.

1916 Ms. Deterding. Mr. Collins votes no.

1917 Mr. DeSantis?

1918 Mr. DeSantis. No.

1919 Ms. Deterding. Mr. DeSantis votes no.

1920 Mr. Smith of Missouri?

1921 Mr. Smith of Missouri. No.

1922 Ms. Deterding. Mr. Smith of Missouri votes no.

1923 Mr. Conyers?

1924 Mr. Conyers. Aye.

1925 Ms. Deterding. Mr. Conyers votes aye.

1926 Mr. Nadler?

1927 Mr. Nadler. No.

1928 Ms. Deterding. Mr. Nadler votes no.

1929 Mr. Scott?

1930 Mr. Scott. Aye.

1931 Ms. Deterding. Mr. Scott votes aye.

1932 Mr. Watt?

1933 Mr. Watt. Aye.

1934 Ms. Deterding. Mr. Watt votes aye.

1935 Ms. Lofgren?

1936 Ms. Lofgren. No.

1937 Ms. Deterding. Ms. Lofgren votes no.

1938 Ms. Jackson Lee?

1939 Ms. Jackson Lee. Aye.

1940 Ms. Deterding. Ms. Jackson Lee votes aye.

1941 Mr. Cohen?

1942 [No response.]

1943 Ms. Deterding. Mr. Johnson?

1944 [No response.]

1945 Ms. Deterding. Mr. Pierluisi?

1946 Mr. Pierluisi. No.

1947 Ms. Deterding. Mr. Pierluisi votes no.

1948 Ms. Chu?

1949 Ms. Chu. Aye.

1950 Ms. Deterding. Ms. Chu votes aye.

1951 Mr. Deutch?

1952 Mr. Deutch. Aye.

1953 Ms. Deterding. Mr. Deutch votes aye.

1954 Mr. Gutierrez?

1955 [No response.]

1956 Ms. Deterding. Ms. Bass?

1957 [No response.]

1958 Ms. Deterding. Mr. Richmond?

1959 Mr. Richmond. Aye.

1960 Ms. Deterding. Mr. Richmond votes aye.

1961 Ms. DelBene?

1962 Ms. DelBene. No.

1963 Ms. Deterding. Ms. DelBene votes no.

1964 Mr. Garcia?

1965 Mr. Garcia. Aye.

1966 Ms. Deterding. Mr. Garcia votes aye.

1967 Mr. Jeffries?

1968 Mr. Jeffries. Aye.

1969 Ms. Deterding. Mr. Jeffries votes aye.

1970 Chairman Goodlatte. The gentleman from North Carolina.

1971 Mr. Coble. No.

1972 Ms. Deterding. Mr. Coble votes no.

1973 Chairman Goodlatte. The gentleman from California.

1974 Mr. Issa. No.

1975 Ms. Deterding. Mr. Issa votes no.

1976 Chairman Goodlatte. The gentleman from Virginia.

1977 Mr. Forbes. No.

1978 Ms. Deterding. Mr. Forbes votes no.

1979 Chairman Goodlatte. The gentleman from Arizona.

1980 Mr. Franks. No.

1981 Ms. Deterding. Mr. Franks votes no.

1982 Chairman Goodlatte. The gentleman from Texas, Mr.

1983 Gohmert.

1984 Mr. Gohmert. No.

1985 Ms. Deterding. Mr. Gohmert votes no.

1986 Chairman Goodlatte. The gentleman from Texas, Mr.

1987 Farenthold.

1988 Mr. Farenthold. No.

1989 Ms. Deterding. Mr. Farenthold votes no.

1990 Chairman Goodlatte. Are there other members who wish to
1991 vote and have not voted?

1992 [No response.]

1993 Chairman Goodlatte. The clerk will report.

1994 Ms. Deterding. Mr. Chairman, nine members voted aye, 21
1995 members voted nay.

1996 Chairman Goodlatte. And the amendment is not agreed to.

1997 For what purpose does the gentleman from Pennsylvania
1998 seek recognition?

1999 Mr. Marino. Mr. Chairman, I have an amendment at the
2000 desk, Marino 37.

2001 Chairman Goodlatte. The clerk will report the
2002 amendment.

2003 Ms. Deterding. An amendment to the amendment in the
2004 nature of a substitute to H.R. 3309 offered by Mr. Marino of
2005 Pennsylvania. Page 13 --

2006 Chairman Goodlatte. Without objection, the amendment
2007 will be considered as read.

2008 [The amendment of Mr. Marino follows:]

2009

2010 Chairman Goodlatte. The gentleman from Pennsylvania is
2011 recognized for 5 minutes on his amendment.

2012 Mr. Marino. I thank the chairman.

2013 While the Innovation Act made substantial strides in an
2014 effort to dismantle the fraudulent business model that is
2015 otherwise known as patent trolling, there is no remedy for
2016 demand letter fraud. Demand letters target family-owned
2017 businesses, entrepreneurs and other small businesses who are
2018 busy trying to build and maintain their family companies.
2019 These folks are at the heart and soul of our economy and we
2020 need to do our best in Congress to protect them from the
2021 abusive practices that occur when shell companies and trial
2022 lawyers run amok.

2023 These small businesses are located in my district, and I
2024 suspect are located in just about every district represented
2025 on this committee. These companies do not have the money to
2026 hire costly lawyers to fight the patent trolls in court and
2027 therefore opt to go with the lesser of the two evils and pay
2028 the patent troll a settlement so they will go away.

2029 This means crafty patent troll entities are making
2030 millions of dollars off hard-working Americans without

2031 facing repercussions. My amendment would allow the
2032 individual or company a chance to get their money back if
2033 they sent money as a result of a letter found to be
2034 fraudulent. Mr. Chairman, I urge my colleagues to join me
2035 in stopping these abusive entities in their tracks and
2036 provide a real remedy for business and individuals, and I
2037 yield back.

2038 Chairman Goodlatte. Would the gentleman yield?

2039 Mr. Marino. Yes, sir.

2040 Chairman Goodlatte. I thank the gentleman for yielding,
2041 and I appreciate the gentleman's interest in this issue in
2042 the introduction of this amendment, and I understand and
2043 have a great deal of sympathy for what this amendment is
2044 attempting to address.

2045 But the nature of this project and patent reform in
2046 general has taught us that even small changes can have
2047 unintended consequences unless they have been vetted and
2048 gone through a careful process. The provision does not
2049 provide clear direction as to how it would be enforced.
2050 Will it be through a private cause of action or existing
2051 cause of action? These questions need to be answered before

2052 we can consider this amendment.

2053 The amendment also doesn't require that the fraud be
2054 committed against the people who are supposed to recover.
2055 This needs to be properly clarified.

2056 The bill represents the efforts of a carefully
2057 negotiated effort, and therefore it makes sense not to adopt
2058 this amendment at this time. However, as I said earlier, I
2059 believe there will be additional opportunities to improve
2060 upon the demand letter measures that are in this bill, and
2061 have already been improved by the amendment offered by the
2062 gentleman from Utah and the gentleman from Florida.

2063 However, I note that the Senate has provisions with
2064 regard to demand letters as well. So I think there will be
2065 more work done on this, and if the gentleman would be
2066 willing to withdraw the amendment, I would be happy to
2067 continue to work with him on this project.

2068 Mr. Marino. I will withdraw, Mr. Chairman, and I look
2069 forward to expeditiously working on this issue. I yield
2070 back.

2071 Chairman Goodlatte. The chair thanks the gentleman.

2072 Without objection, the amendment is withdrawn.

2073 I am being told there are two people in line that I am
2074 supposed to recognize. I am told that the gentleman from
2075 New York should be recognized.

2076 Mr. Watt. I think he is trying to make a parliamentary
2077 inquiry.

2078 Mr. Richmond. Well, yes. I was inquiring whether,
2079 because he withdrew it now, I can't speak on it or strike
2080 the last word?

2081 Chairman Goodlatte. You can strike the last word at any
2082 time. So if you want to speak on that, I will recognize you
2083 first to strike the last word.

2084 Mr. Richmond. Well, I will move to strike the last
2085 word, and I will just say in a clear example of
2086 bipartisanship, I adopt all of your comments to that
2087 amendment because it talked about -- your argument was
2088 talking about unintended consequences, the fact that it
2089 needed to be studied more, and we want to make sure that it
2090 is done right.

2091 I just wanted to reiterate that that was the exact same
2092 argument, and I believed it when you said it, and I believe
2093 it when Mr. Watt says it about the judiciary asking for the

2094 same authority to be thorough, to study it so that we don't
2095 have unintended consequences, and it is not a play to be
2096 smart, but it is really a concern as a practicing lawyer
2097 that sometimes we deal in theory here and we should let the
2098 people who deal with it in practice, in reality every day,
2099 think about it.

2100 So thank you for allowing me to --

2101 Chairman Goodlatte. Will the gentleman yield on that
2102 point?

2103 Mr. Richmond. Absolutely.

2104 Chairman Goodlatte. I thank the gentleman for yielding.
2105 I appreciate his comments. I share his concern about this
2106 particular amendment. But I also appreciate his concern
2107 that what we do and what the judiciary does with regard to
2108 enacting this legislation, because this legislation does not
2109 statutorily impose upon them these rules, it instructs them
2110 to do certain things, but they have latitude to do them.

2111 And I would also note that these problems that are
2112 addressed in this legislation are not new problems. They
2113 have been known to the judiciary for a long time. They have
2114 chosen not to do so. They may feel that they have valid

2115 reasons not to do it. They may have simply not felt the
2116 need or desire or priority to do it. But it doesn't change
2117 the fact that the Congress has a constitutional authority
2118 and, in my opinion and in the opinion of many others, a
2119 responsibility to see that the courts are properly
2120 administered when we see that something isn't being done
2121 that we think should be done.

2122 So as a result of that, the language in this bill has
2123 been carefully vetted over a long period of time, with the
2124 opportunity for many to offer comments, including some in
2125 the judiciary who have offered comments, and we have taken
2126 all of that into account. It still doesn't mean everybody
2127 is going to agree on what we have done, but this process
2128 isn't over. But the will of the Congress, the
2129 representatives of the people, the elected representatives
2130 of the people, is an important part of determining how the
2131 courts are structured and how they operate.

2132 Mr. Watt. Will the gentleman yield?

2133 Mr. Richmond. Yes, I will yield.

2134 Mr. Watt. The chairman I think believes that you were
2135 limiting your comments to the amendment dealing with the

2136 rules change.

2137 I think the gentleman's comments applied to the same
2138 arguments and discussion that I had about the bill in
2139 general. There are a lot of unintended consequences in this
2140 bill, and I think as we go along in the markup you are going
2141 to see some more unintended consequences that I hope the
2142 members will try to address, or help us address, if we
2143 haven't closed our minds about making this a better bill
2144 that we can coalesce behind.

2145 I thank the gentleman for yielding. I yield back.

2146 Mr. Richmond. And I will yield back to the chairman.

2147 Chairman Goodlatte. The chair thanks the gentleman.

2148 And the chair inquires of the gentleman from New York,
2149 for what purpose does he seek recognition?

2150 Mr. Jeffries. Mr. Chairman, I have an amendment at the
2151 desk, Jeffries 50.

2152 Chairman Goodlatte. The clerk will report the
2153 amendment.

2154 Ms. Deterding. Amendment to the amendment in the nature
2155 of a substitute to H.R. 3309 offered by Mr. Jeffries of New
2156 York. Page 43, strike line 12 and all that follows through

2157 page 45, line 5, and redesignate subsequent subsections
2158 accordingly.

2159 [The amendment of Mr. Jeffries follows:]

2160

2161 Mr. Jeffries. Mr. Chairman, this amendment keeps intact
2162 Section 145 of the patent law in order to preserve a patent
2163 applicant's ability to challenge in district court the U.S.
2164 Patent and Trademark Office's denial of a patent.

2165 Under current law, a patent applicant who is denied a
2166 patent after appealing to the PTO's Patent Trial and Appeal
2167 Board currently has two options. First, the party can
2168 appeal directly to the Federal circuit under Section 141 of
2169 the patent law. Alternatively, that party can currently
2170 challenge the decision of the PTO in the U.S. District Court
2171 for the Eastern District of Virginia under Section 145.

2172 If the Federal circuit reviews the board's decision
2173 under Section 141, that review is based on the record before
2174 the USPTO and a determination is made as to whether the
2175 board's findings are supported by substantial evidence.
2176 However, under Section 145, the district court can allow
2177 for, under current law, the introduction of new evidence and
2178 make de novo findings that take into account this evidence,
2179 as well as the administrative record before the PTO.

2180 This Section 145 provision has been utilized modestly
2181 and with great care by patent applicants, and it provides an

2182 important procedural protection for innovators that should
2183 be retained in statute.

2184 Section 145 creates not only a means for reviewing
2185 examiner decisions, as well as administrative proceedings of
2186 the PTO, but it also creates an important due process
2187 procedural protection that only the courts can provide. It
2188 is consistent with neighboring trademark laws that allow for
2189 trademark applicants to similarly appeal to the district
2190 court. Removing Section 145 and its procedural protection
2191 would therefore in addition create an imbalance between two
2192 equally significant areas of intellectual property law.

2193 For these reasons, I urge the members of the committee
2194 to support this amendment, and I yield back.

2195 Ms. Lofgren. Would the gentleman yield?

2196 Mr. Jeffries. Certainly.

2197 Ms. Lofgren. I just would like to commend the gentleman
2198 for this amendment that if you had not offered I would have
2199 offered because it is really an extraordinary concept that
2200 we would remove this safeguard. I mean, I think it is
2201 unwarranted.

2202 The fact is, this is rarely used. I mean, it is almost

2203 never used, but that doesn't mean it doesn't serve a useful
2204 role. Somebody told me the other day, and I know we have
2205 people from the Patent Office here and they should not take
2206 this as a negative comment, but it helps keep the Patent
2207 Office honest because there is this safeguard.

2208 So I would really think this is an important amendment,
2209 and I really commend you for offering it and strongly
2210 support it, and I thank the gentleman for yielding.

2211 Mr. Jeffries. Thank you.

2212 Chairman Goodlatte. The chair thanks the gentleman, and
2213 the chair recognizes himself in opposition to the
2214 gentleman's amendment to strike the bill provisions on
2215 Section 145 proceedings.

2216 These proceedings are strongly supported by the Patent
2217 Office and are necessary in light of the implementation of
2218 the America Invents Act. Section 145 allows a patent
2219 applicant whose claims have been rejected and who has
2220 appealed to the Patent Trial and Appeal Board and lost to
2221 challenge the board's decision in a Federal district court
2222 rather than appealing to the Federal circuit.

2223 In its recent decision in *Kappos v. Hyatt*, the Supreme

2224 Court construed Section 145 to allow applicants to present
2225 new evidence in the district court that had never been
2226 presented to the examiner or to the board, and to require
2227 the district judge to make de novo determinations of
2228 patentability based on the new evidence.

2229 Section 145 actions encourage applicants to withhold
2230 evidence from the PTO. This not only makes examination and
2231 board proceedings irrelevant and wastes PTO resources, it
2232 also puts a Federal district judge who usually does not have
2233 a technical background in the difficult position of
2234 conducting a patent examination without the benefit of the
2235 views of the PTO and its examiners on the evidence
2236 presented.

2237 Section 145 is also outdated and unnecessary. Today,
2238 applicants have administrative routes for offering new
2239 evidence. Even after a board decision affirming the
2240 examiner's rejection, an applicant can file a continuation
2241 application and can introduce new evidence of patentability
2242 in that continuation. But because of that Supreme Court
2243 decision, I think that while the gentleman is correct that
2244 it has not been used with great frequency in the past, the

2245 PTO is rightly concerned that that has opened the door to
2246 much greater use and abuse of the patent approval process.
2247 And for that reason, I must oppose the amendment.

2248 For what purpose does the gentleman from North Carolina
2249 seek recognition?

2250 Mr. Watt. I move to strike the last word.

2251 Chairman Goodlatte. The gentleman is recognized for 5
2252 minutes.

2253 Mr. Watt. Mr. Chairman, this is yet another example of
2254 one of those areas that really is unnecessary for us to be
2255 in this territory. And if we are in this territory, we
2256 could at least craft a bill that addresses the concern that
2257 the chair just expressed and does not do away with the whole
2258 process.

2259 I can understand why the PTO doesn't want a court to
2260 look over their shoulders. Okay, we just told the courts we
2261 are not going to let you help us with the rules. Now we are
2262 going to tell the courts we aren't going to let you help us
2263 decide a case. Come on. What are we going to do with the
2264 courts next? I mean, this is an area that we should not be
2265 in in this bill. It has nothing to do with any troll issue.

2266 I mean, this is just an example of how this bill has gotten
2267 out of control.

2268 Chairman Goodlatte. Would the gentleman yield on that
2269 point?

2270 Mr. Watt. Yes, sir.

2271 Chairman Goodlatte. I thank the gentleman for yielding,
2272 because this has everything to do with patent trolls. That
2273 is the reason why this provision is in the bill.

2274 The Supreme Court's ruling created --

2275 Mr. Watt. Well, that is because you -- let me just
2276 reclaim. That is because you didn't take the time to draft
2277 the bill to address the issue that you are talking about.
2278 You are doing away with the whole review process to address
2279 a Supreme Court decision. You could have surgically, if you
2280 had taken the time to deal with this, dealt with the Supreme
2281 Court's decision to open up the whole review process. But
2282 this is just an example where we have overstepped what even
2283 you were trying to do.

2284 I yield back to the chairman.

2285 Chairman Goodlatte. I thank the gentleman for yielding.

2286 The fact of the matter is we are not overstepping our

2287 bounds here because that decision subsumes the purpose of
2288 Section 145. And so if that is going to be the case and you
2289 are going to have a situation where you are going to
2290 heighten the ability of patent trolls to abuse the system by
2291 deliberately withholding information from the Patent Office
2292 as they determine whether or not it is a valid patent, and
2293 then they can go through a district court and have the court
2294 reopen the whole process, you are going to game the system
2295 throughout the system, and this process needs to be adjusted
2296 to recognize the realities of the America Invents Act and
2297 the Supreme Court decision.

2298 Mr. Watt. Reclaiming my time just to point out to you
2299 that this revision that you are making doesn't apply only to
2300 trolls. It applies to people who are using this appeal
2301 process for legitimate reasons, and that is one of the
2302 concerns that we have expressed about this entire bill, and
2303 you are going to see it some more in subsequent amendments.

2304 You are setting up a set of rules to deal with trolls
2305 that now applies to everybody who is operating in this
2306 space. And if you set out to solve a problem dealing with
2307 trolls, you shouldn't be changing the whole regime to deal

2308 with everybody who is operating in the patent system. That
2309 is the point I am making.

2310 Chairman Goodlatte. If the gentleman would yield
2311 further?

2312 Mr. Watt. I will yield.

2313 Chairman Goodlatte. The America Invents Act already
2314 changes the whole regime and creates for those same patent
2315 applicants new avenues, administrative routes for offering
2316 new evidence, even after a board decision affirming the
2317 examiner's rejection. But it doesn't give them an
2318 opportunity to go around the Patent Office, and that is the
2319 problem with having this second way of doing that that
2320 allows the whole thing to be gamed by somebody who withholds
2321 the evidence from the Patent Office, and that is why I must
2322 oppose the amendment.

2323 For what purpose does the gentleman from Florida seek
2324 recognition?

2325 Mr. Watt. My time has not expired. It is my time.

2326 Chairman Goodlatte. Oh, I am sorry. I apologize. The
2327 gentleman is correct.

2328 Mr. Watt. I will yield back, but maybe we are doing

2329 away with the due process of the committee too while we are
2330 doing away with the courts. I yield back.

2331 Chairman Goodlatte. For what purpose does the gentleman
2332 from Florida seek recognition?

2333 Mr. Garcia. Mr. Chairman, I move to strike the last
2334 word.

2335 Chairman Goodlatte. The gentleman is recognized for 5
2336 minutes.

2337 Mr. Garcia. I am going to yield my time to Mr.
2338 Jeffries.

2339 Mr. Jeffries. I thank the gentleman for yielding.

2340 I think it bears repeating, as my distinguished
2341 colleague from Louisiana mentioned, that in the chairman's
2342 own words, even small changes have unintended consequences.
2343 This is not a small change, and it appears that the premise
2344 of the change is connected to a problem where there is not a
2345 scintilla of evidence to support the notion that individual
2346 patent applicants have actually gamed the system in ways
2347 that are abusive or inappropriate.

2348 In fact, the Supreme Court decision that the chairman
2349 references is a decision that I believe was issued on April

2350 12 of 2012. So that suggests to me that 19 months have
2351 passed since the Supreme Court allegedly opened the door for
2352 people to rush in and engage in inappropriate behavior, and
2353 there is no evidence that has been brought to bear since
2354 that Supreme Court decision that Section 145 has been
2355 abused.

2356 In fact, the evidence is to the contrary, that it
2357 continues to be a provision that is only modestly or
2358 infrequently used and nonetheless provides an important
2359 procedural protection for individual patent applicants. It
2360 is my understanding that the decision was made as it relates
2361 to this bill to try and proceed in a bipartisan fashion. I
2362 am hopeful that this particular provision that is not
2363 ideological in nature but that is common sense as it relates
2364 to protecting a provision that currently exists in law, not
2365 for patent trolls to abuse. This is in the context of the
2366 PTO.

2367 The patent troll problem is a problem that exists in the
2368 district court system. And so for that reason, for that
2369 additional reason, I don't think that it would be
2370 appropriate to move forward with a more than small change

2371 that clearly will have unintended consequences, and I yield
2372 back.

2373 Mr. Conyers. Will the gentleman yield?

2374 Mr. Jeffries. Yes.

2375 Mr. Conyers. I thank you very much, Mr. Jeffries.

2376 I would like to tell you that this discussion has led me
2377 to strongly support your amendment, and I hope that members
2378 who may not be expected to have studied this with all the
2379 precision that some of the subcommittee has will go along
2380 with your recommendation that is embodied in the amendment.
2381 I think you have done a very thoughtful and creative job of
2382 bringing this issue before the committee.

2383 I thank the gentleman for yielding.

2384 Mr. Jeffries. Thank you. I yield back.

2385 Chairman Goodlatte. For what purpose does the gentleman
2386 from New York seek recognition?

2387 Mr. Nadler. I thank the chairman. Mr. Chairman, I rise
2388 in support of the amendment offered by the gentleman from
2389 New York. I think it is a very simple amendment.

2390 I think as a general principle that there ought to be a
2391 recourse to the Federal courts against administrative

2392 actions if someone thinks that the administrative action is
2393 improper. I think we generally follow that principle. The
2394 Supreme Court ruled that way in this situation. There has
2395 been no abuse of it, no evidence that there is a problem
2396 here, and we should support the general notion that
2397 administrative agencies, even the Patent Office, are not
2398 supreme, that you have the right to go to court, and I think
2399 this committee should certainly support that, and I commend
2400 the gentleman from New York for offering this amendment, and
2401 I support it. I urge its adoption.

2402 Chairman Goodlatte. The question occurs on the
2403 amendment offered by the gentleman from New York.

2404 All those in favor, respond by saying aye.

2405 Those opposed, no.

2406 In the opinion of the chair, the noes have it.

2407 A recorded vote is requested, and the clerk will call
2408 the roll.

2409 Ms. Deterding. Mr. Goodlatte?

2410 Chairman Goodlatte. No.

2411 Ms. Deterding. Mr. Goodlatte votes no.

2412 Mr. Sensenbrenner?

2413 [No response.]

2414 Ms. Deterding. Mr. Coble?

2415 [No response.]

2416 Ms. Deterding. Mr. Smith of Texas?

2417 [No response.]

2418 Ms. Deterding. Mr. Chabot?

2419 [No response.]

2420 Ms. Deterding. Mr. Bachus?

2421 Mr. Bachus. No.

2422 Ms. Deterding. Mr. Bachus votes no.

2423 Mr. Issa?

2424 [No response.]

2425 Ms. Deterding. Mr. Forbes?

2426 [No response.]

2427 Ms. Deterding. Mr. King?

2428 Mr. King. No.

2429 Ms. Deterding. Mr. King votes no.

2430 Mr. Franks?

2431 Mr. Franks. No.

2432 Ms. Deterding. Mr. Franks votes no.

2433 Mr. Gohmert?

2434 [No response.]

2435 Ms. Deterding. Mr. Jordan?

2436 Mr. Jordan. No.

2437 Ms. Deterding. Mr. Jordan votes no.

2438 Mr. Poe?

2439 [No response.]

2440 Ms. Deterding. Mr. Chaffetz?

2441 Mr. Chaffetz. No.

2442 Ms. Deterding. Mr. Chaffetz votes no.

2443 Mr. Marino?

2444 Mr. Marino. No.

2445 Ms. Deterding. Mr. Marino votes no.

2446 Mr. Gowdy?

2447 Mr. Gowdy. No.

2448 Ms. Deterding. Mr. Gowdy votes no.

2449 Mr. Amodei?

2450 [No response.]

2451 Ms. Deterding. Mr. Labrador?

2452 Mr. Labrador. No.

2453 Ms. Deterding. Mr. Labrador votes no.

2454 Mr. Farenthold?

2455 Mr. Farenthold. No.

2456 Ms. Deterding. Mr. Farenthold votes no.

2457 Mr. Holding?

2458 Mr. Holding. No.

2459 Ms. Deterding. Mr. Holding votes no.

2460 Mr. Collins?

2461 Mr. Collins. No.

2462 Ms. Deterding. Mr. Collins votes no.

2463 Mr. DeSantis?

2464 Mr. DeSantis. No.

2465 Ms. Deterding. Mr. DeSantis votes no.

2466 Mr. Smith of Missouri?

2467 [No response.]

2468 Ms. Deterding. Mr. Conyers?

2469 Mr. Conyers. Aye.

2470 Ms. Deterding. Mr. Conyers votes aye.

2471 Mr. Nadler?

2472 Mr. Nadler. Aye.

2473 Ms. Deterding. Mr. Nadler votes aye.

2474 Mr. Scott?

2475 Mr. Scott. Aye.

2476 Ms. Deterding. Mr. Scott votes aye.
2477 Mr. Watt?
2478 Mr. Watt. Aye.
2479 Ms. Deterding. Mr. Watt votes aye.
2480 Ms. Lofgren?
2481 Ms. Lofgren. Aye.
2482 Ms. Deterding. Ms. Lofgren votes aye.
2483 Ms. Jackson Lee?
2484 [No response.]
2485 Ms. Deterding. Mr. Cohen?
2486 [No response.]
2487 Ms. Deterding. Mr. Johnson?
2488 [No response.]
2489 Ms. Deterding. Mr. Pierluisi?
2490 Mr. Pierluisi. Aye.
2491 Ms. Deterding. Mr. Pierluisi votes aye.
2492 Ms. Chu?
2493 Ms. Chu. Aye.
2494 Ms. Deterding. Ms. Chu votes aye.
2495 Mr. Deutch?
2496 Mr. Deutch. Aye.

2497 Ms. Deterding. Mr. Deutch votes aye.

2498 Mr. Gutierrez?

2499 [No response.]

2500 Ms. Deterding. Ms. Bass?

2501 [No response.]

2502 Ms. Deterding. Mr. Richmond?

2503 Mr. Richmond. Aye.

2504 Ms. Deterding. Mr. Richmond votes aye.

2505 Ms. DelBene?

2506 Ms. DelBene. Aye.

2507 Ms. Deterding. Ms. DelBene votes aye.

2508 Mr. Garcia?

2509 Mr. Garcia. Aye.

2510 Ms. Deterding. Mr. Garcia votes aye.

2511 Mr. Jeffries?

2512 Mr. Jeffries. Aye.

2513 Ms. Deterding. Mr. Jeffries votes aye.

2514 Chairman Goodlatte. The gentleman from North Carolina.

2515 Mr. Coble. No.

2516 Ms. Deterding. Mr. Coble votes no.

2517 Chairman Goodlatte. The gentleman from Virginia.

2518 Mr. Forbes. No.

2519 Ms. Deterding. Mr. Forbes votes no.

2520 Chairman Goodlatte. The gentleman from Missouri.

2521 Mr. Smith of Missouri. No.

2522 Ms. Deterding. Mr. Smith of Missouri votes no.

2523 Chairman Goodlatte. The gentleman from Nevada.

2524 Mr. Amodei. No.

2525 Ms. Deterding. Mr. Amodei votes no.

2526 Chairman Goodlatte. The gentleman from Texas, Mr.

2527 Gohmert.

2528 Mr. Gohmert. No.

2529 Ms. Deterding. Mr. Gohmert votes no.

2530 Chairman Goodlatte. The gentlewoman from Texas.

2531 Ms. Jackson Lee. Was my vote recorded?

2532 Ms. Deterding. Not recorded.

2533 Ms. Jackson Lee. Aye.

2534 Ms. Deterding. Ms. Jackson Lee votes aye.

2535 Chairman Goodlatte. The gentleman from California.

2536 Mr. Issa. No.

2537 Ms. Deterding. Mr. Issa votes no.

2538 Chairman Goodlatte. Are there any members who have not

2539 voted who wish to vote?

2540 [No response.]

2541 Chairman Goodlatte. The clerk will report.

2542 Ms. Deterding. Mr. Chairman, 13 members voted aye, 19

2543 members voted nay.

2544 Chairman Goodlatte. And the amendment is not agreed to.

2545 The gentleman from Pennsylvania, for what purpose does

2546 he seek recognition?

2547 Mr. Marino. Mr. Chairman, I have an amendment at the

2548 desk. It is Marino 40.

2549 Chairman Goodlatte. The clerk will report the

2550 amendment.

2551 Ms. Deterding. Amendment to the amendment in the nature

2552 of a substitute to H.R. 3309 offered by Mr. Marino of

2553 Pennsylvania. Page 13, line 13, strike the quotation marks

2554 in the second --

2555 Chairman Goodlatte. Without objection, the amendment

2556 will be considered as read.

2557 [The amendment of Mr. Marino follows:]

2558

2559 Chairman Goodlatte. The gentleman from Pennsylvania is
2560 recognized for 5 minutes on his amendment.

2561 Mr. Marino. Mr. Chairman, I believe the bill we are
2562 taking up today does a lot of good to level the playing
2563 field in patent litigation, including the realm of
2564 attorney's fees. I know from my days spent in the courtroom
2565 as a prosecutor that although judges have a great deal of
2566 discretion in issuing attorney's fees and sanctions for
2567 abusive litigation practices, they simply do not.

2568 This in large part is why we are here today. While the
2569 attorney's fees can be extremely costly, especially in the
2570 instance of cases that are drug out and appealed, the
2571 biggest cost in these types of suits comes from and as a
2572 result of the massive discovery request.

2573 My amendment would allow the defendant to motion for the
2574 plaintiff to provide a bond to cover cost of the additional
2575 discovery. If there is a legitimate infringement, this is
2576 not going to prevent the plaintiff from pursuing the
2577 discovery needed to make a case. However, I predict we
2578 would see a significant drop in the excessive discovery
2579 requests that are so often used to bleed the opposing party

2580 dry.

2581 Unlike other types of litigation, in these patent
2582 infringement suits, it is just one party pursuing discovery
2583 of the other party without having to divulge discovery
2584 material of equal protection.

2585 Mr. Chairman, I really do not want to prevent this great
2586 piece of an important piece of law to move forward. That is
2587 the particular reason why I am going to withdraw my
2588 amendment today. But I think this is an idea worth
2589 discussing in the weeks to come as we try to perfect the
2590 bill.

2591 I want to urge the chairman once again that, in my
2592 experience in the courtroom, judges, particularly in the
2593 Federal court system, are very, very reluctant to award
2594 attorney's fees under any circumstances.

2595 And I yield back.

2596 Chairman Goodlatte. Would the gentleman yield before he
2597 yields back?

2598 Mr. Marino. Yes, I will.

2599 Chairman Goodlatte. I thank the gentleman. And without
2600 objection, his amendment will be withdrawn.

2601 However, I will say that I share his concern, and I will
2602 be happy to continue the discussion with him moving forward
2603 on this issue, and I know some other Members may wish to as
2604 well.

2605 For what purpose does the gentleman from North Carolina,
2606 Mr. Watt, seek recognition?

2607 Mr. Watt. I have an amendment at the desk.

2608 Chairman Goodlatte. The clerk will report the
2609 amendment.

2610 Mr. Watt. It would be Watt-Chabot 39. Watt-Chabot.

2611 Ms. Deterding. Amendment to the amendment in the nature
2612 of a substitute to H.R. 3309, offered by Mr. Watt of North
2613 Carolina and Mr. Chabot of Ohio.

2614 Mr. Watt. Mr. Chairman, I ask unanimous consent the
2615 amendment be considered --

2616 Chairman Goodlatte. Without objection, the amendment
2617 will be considered read.

2618 [The amendment of Mr. Watt and Mr. Chabot follows:]

2619

2620 Chairman Goodlatte. And the gentleman is recognized for
2621 5 minutes on his amendment.

2622 Mr. Watt. Thank you, Mr. Chairman.

2623 Section 3(d) of the manager's amendment adds a new
2624 section to the Patent Act that would limit discovery in
2625 every patent infringement case until the court has construed
2626 the patent claims at issue. Under this provision, discovery
2627 would be permitted only as necessary for the court to
2628 construe the claims, with very limited discretion to expand
2629 the scope of discovery such as when special circumstances
2630 would make the denial of discovery a manifest injustice.

2631 Although I appreciate the chairman's effort to broaden
2632 the circumstances under which a court might enlarge
2633 discovery, the narrow exceptions in the manager's amendment
2634 do not remedy the principal concerns I had with this
2635 proposal in the introduced version of the bill. Namely,
2636 that it unduly restricts the discretion of judges to manage
2637 cases in their courts and the prospect that doing so will
2638 prolong patent litigation and substantially increase the
2639 already-high cost.

2640 The problem with this provision and, indeed, the problem

2641 with the bill, notwithstanding its laudable intentions, is
2642 that it reflects a narrow and one-sided view of patent
2643 litigation. In essence, the bill views litigation solely
2644 from the prism of the defendant in an action brought by an
2645 abusive nonpracticing entity, and more likely than not in
2646 the Eastern District of Texas.

2647 By stripping courts of discretion to manage discovery in
2648 a manner tailored to the specific parties and specific facts
2649 of each case, this unbalanced and inflexible approach to all
2650 cases will tie a judge's hands in cases brought by
2651 legitimate patent owners seeking to protect their patented
2652 technologies and products against infringement quickly and
2653 expeditiously.

2654 My amendment would preserve the ability of judges to
2655 manage cases with the individual attention for which our
2656 judiciary is praised around the world. But it also makes
2657 clear the intent of Congress that in the forefront of the
2658 judge's mind should be the question of whether it is prudent
2659 in each patent case that comes before him or her to limit
2660 discovery prior to claim construction hearing.

2661 And it may well be that some patent cases might be

2662 managed more efficiently by deferring some or all discovery
2663 pending the claim's construction ruling. The courts are
2664 already empowered to manage discovery and to tailor case
2665 management to the particular facts and circumstances of each
2666 case, and the chairman's bill actually takes that authority
2667 away.

2668 As a former practicing attorney for over two decades, I
2669 can tell you that the most predictable thing about trying
2670 cases is their unpredictability. We are simply not
2671 equipped, as a legislative body, to anticipate every
2672 circumstance that may confront a judge in managing a patent
2673 case.

2674 For example, step out of the shoes of the besieged
2675 defendant shouldering the abuses of a so-called patent troll
2676 and into those of a small inventor challenging a goliath for
2677 having infringed his most precious possession, his patent.
2678 Prior to a claim construction hearing, that small inventor
2679 might endure a barrage of tactical motions specifically
2680 intended to overwhelm the little guy, deplete his resources,
2681 and deliberately delay the Markman hearing until the little
2682 guy goes away.

2683 Abusive tactics are not the exclusive domain of
2684 plaintiffs or even patent trolls. An automatic stay of
2685 discovery pending claim construction is simply misguided and
2686 likely to be counterproductive, produce nefarious incentives
2687 for every alleged infringer to game the system, and
2688 encroach on the judicial independence in addition.

2689 Anyone who has a modicum of sympathy for the small
2690 inventor or start-up in your district should vote in favor
2691 of my amendment and reject the one-size-fits-all approach to
2692 patent infringement case management in the manager's
2693 amendment.

2694 This is an amendment, Mr. Chairman, that Mr. Chabot has
2695 been kind enough to join with me on. He shares the
2696 concerns. I had hoped that he would be in the room when we
2697 brought it up, but he has been -- he told me he had some
2698 other challenges that he was dealing with in other
2699 committees.

2700 So I am moving forward with the amendment. It is my
2701 amendment and Mr. Chabot's amendment. And I hope that we
2702 will not do this one-size-fits-all approach that is
2703 reflected in the chairman's mark and that we will moderate

2704 it by adopting my -- me and Mr. Chabot's amendment.

2705 I yield back.

2706 Chairman Goodlatte. The chair thanks the gentleman and
2707 recognizes himself in opposition to the amendment.

2708 This amendment offers a reformulation of the provision
2709 in the bill that that provision, however, is the product of
2710 months of discussions with stakeholders and the Patent
2711 Office. And good legislative practice prevents us from
2712 accepting entirely new language without an opportunity to
2713 adequately consider its implications.

2714 The Innovation Act limits discovery prior to the court
2715 interpreting a patent claim, so-called Markman hearing, in
2716 patent cases where the scope of any patent -- asserted
2717 patent claim is disputed. Those engaged in abusive patent
2718 litigation commonly bring lawsuits accusing broad swaths of
2719 plaintiff's businesses without any realistic expectation
2720 that they will pursue the full scope of those assertions in
2721 trial. This practice creates high unnecessary discovery
2722 costs for defendants at the beginning of lawsuits.

2723 The Innovation Act limits discovery to information
2724 necessary to resolve the scope of the dispute. It is

2725 important for the court to be able to stay discovery until
2726 they have had an opportunity to narrow the case to its
2727 appropriate dimensions. The bill recognizes district courts
2728 need to retain discretionary control over discovery and
2729 accordingly allows courts to expand discovery by motion or
2730 where speedy resolution is important.

2731 The manager's amendment further liberalizes this
2732 provision by allowing additional discovery to prevent a
2733 manifest injustice. This safety valve addresses remaining
2734 concerns over this provision.

2735 The amendment takes all the teeth out of the provision
2736 and makes it entirely discretionary. District judges,
2737 however, already have discretion to manage discovery. This
2738 amendment turns Section 3(d) into something that does
2739 nothing at all, and therefore, I must oppose the amendment.

2740 The question occurs on the amendment offered by the
2741 gentleman from North Carolina.

2742 All those in favor, respond by saying aye.

2743 Those opposed, no.

2744 In the opinion of the chair, the noes have it. The
2745 amendment is not agreed to.

2746 Mr. Watt. Mr. Chairman, I request a recorded vote.

2747 Chairman Goodlatte. The gentleman requests a recorded

2748 vote, and the clerk will call the roll.

2749 Ms. Deterding. Mr. Goodlatte?

2750 Chairman Goodlatte. No.

2751 Ms. Deterding. Mr. Goodlatte votes no.

2752 Mr. Sensenbrenner?

2753 [No response.]

2754 Ms. Deterding. Mr. Coble?

2755 [No response.]

2756 Ms. Deterding. Mr. Smith of Texas?

2757 [No response.]

2758 Ms. Deterding. Mr. Chabot?

2759 [No response.]

2760 Ms. Deterding. Mr. Bachus?

2761 Mr. Bachus. No.

2762 Ms. Deterding. Mr. Bachus votes no.

2763 Mr. Issa?

2764 [No response.]

2765 Ms. Deterding. Mr. Forbes?

2766 [No response.]

2767 Ms. Deterding. Mr. King?

2768 [No response.]

2769 Ms. Deterding. Mr. Franks?

2770 Mr. Franks. No.

2771 Ms. Deterding. Mr. Franks votes no.

2772 Mr. Gohmert?

2773 [No response.]

2774 Ms. Deterding. Mr. Jordan?

2775 Mr. Jordan. No.

2776 Ms. Deterding. Mr. Jordan votes no.

2777 Mr. Poe?

2778 [No response.]

2779 Ms. Deterding. Mr. Chaffetz?

2780 Mr. Chaffetz. No.

2781 Ms. Deterding. Mr. Chaffetz votes no.

2782 Mr. Marino?

2783 Mr. Marino. No.

2784 Ms. Deterding. Mr. Marino votes no.

2785 Mr. Gowdy?

2786 [No response.]

2787 Ms. Deterding. Mr. Amodei?

2788 Mr. Amodei. No.

2789 Ms. Deterding. Mr. Amodei votes no.

2790 Mr. Labrador?

2791 Mr. Labrador. No.

2792 Ms. Deterding. Mr. Labrador votes no.

2793 Mr. Farenthold?

2794 Mr. Farenthold. No.

2795 Ms. Deterding. Mr. Farenthold votes no.

2796 Mr. Holding?

2797 Mr. Holding. No.

2798 Ms. Deterding. Mr. Holding votes no.

2799 Mr. Collins?

2800 Mr. Collins. No.

2801 Ms. Deterding. Mr. Collins votes no.

2802 Mr. DeSantis?

2803 Mr. DeSantis. No.

2804 Ms. Deterding. Mr. DeSantis votes no.

2805 Mr. Smith of Missouri?

2806 Mr. Smith of Missouri. No.

2807 Ms. Deterding. Mr. Smith of Missouri votes no.

2808 Mr. Conyers?

2809 Mr. Conyers. Aye.

2810 Ms. Deterding. Mr. Conyers votes aye.

2811 Mr. Nadler?

2812 Mr. Nadler. Aye.

2813 Ms. Deterding. Mr. Nadler votes aye.

2814 Mr. Scott?

2815 Mr. Scott. Aye.

2816 Ms. Deterding. Mr. Scott votes aye.

2817 Mr. Watt?

2818 Mr. Watt. Aye.

2819 Ms. Deterding. Mr. Watt votes aye.

2820 Ms. Lofgren?

2821 Ms. Lofgren. No.

2822 Ms. Deterding. Ms. Lofgren votes no.

2823 Ms. Jackson Lee?

2824 [No response.]

2825 Ms. Deterding. Mr. Cohen?

2826 [No response.]

2827 Ms. Deterding. Mr. Johnson?

2828 [No response.]

2829 Ms. Deterding. Mr. Pierluisi?

2830 Mr. Pierluisi. No.

2831 Ms. Deterding. Mr. Pierluisi votes no.

2832 Ms. Chu?

2833 Ms. Chu. Yes.

2834 Ms. Deterding. Ms. Chu votes aye.

2835 Mr. Deutch?

2836 Mr. Deutch. Aye.

2837 Ms. Deterding. Mr. Deutch votes aye.

2838 Mr. Gutierrez?

2839 [No response.]

2840 Ms. Deterding. Ms. Bass?

2841 [No response.]

2842 Ms. Deterding. Mr. Richmond?

2843 Mr. Richmond. Aye.

2844 Ms. Deterding. Mr. Richmond votes aye.

2845 Ms. DelBene?

2846 Ms. DelBene. Aye.

2847 Ms. Deterding. Ms. DelBene votes aye.

2848 Mr. Garcia?

2849 [No response.]

2850 Ms. Deterding. Mr. Jeffries?

2851 [No response.]

2852 Chairman Goodlatte. The gentleman from North Carolina?

2853 Mr. Coble. No.

2854 Ms. Deterding. Mr. Coble votes no.

2855 Chairman Goodlatte. The gentleman from Virginia?

2856 Mr. Forbes. No.

2857 Ms. Deterding. Mr. Forbes votes no.

2858 Chairman Goodlatte. The gentleman from Iowa?

2859 Mr. King. No.

2860 Ms. Deterding. Mr. King votes no.

2861 Chairman Goodlatte. The gentleman from Texas?

2862 Mr. Gohmert. No.

2863 Ms. Deterding. Mr. Gohmert votes no.

2864 Chairman Goodlatte. The gentleman from South Carolina?

2865 Mr. Gowdy. No.

2866 Ms. Deterding. Mr. Gowdy votes no.

2867 Chairman Goodlatte. The gentleman from California?

2868 Mr. Issa. No.

2869 Ms. Deterding. Mr. Issa votes no.

2870 Chairman Goodlatte. Are there any Members who have not

2871 voted who wish to vote?

2872 [No response.]

2873 Chairman Goodlatte. The clerk will report.

2874 Ms. Deterding. Mr. Chairman, 8 Members voted aye; 21

2875 Members voted nay.

2876 Chairman Goodlatte. And the amendment is not agreed to.

2877 For what purpose does the gentleman from Pennsylvania

2878 seek recognition?

2879 Mr. Marino. Mr. Chairman, I have an amendment at the

2880 desk, and it is Marino amendment 43.

2881 Chairman Goodlatte. The clerk will report the

2882 amendment.

2883 Ms. Deterding. Amendment to the amendment in the nature

2884 of a substitute to H.R. 3309, offered by Mr. Marino of

2885 Pennsylvania. Page 43, insert the following after line 9.

2886 Chairman Goodlatte. Without objection, the amendment

2887 will be considered as read.

2888 [The amendment of Mr. Marino follows:]

2889

2890 Chairman Goodlatte. And the gentleman is recognized for
2891 5 minutes on his amendment.

2892 Mr. Marino. Mr. Chairman, my colleagues and I have
2893 shown there is significant concern with abusive demand
2894 letters. It is my sincere hope that this bill will have a
2895 trickle-down impact in reducing the number of abusive demand
2896 letters. However, I think it is important that we take a
2897 deeper dive on the gravity of the demand letter problem more
2898 specifically, especially because many who receive these
2899 letters will settle and never see their day in court.

2900 My amendment requests that the U.S. Patent and Trademark
2901 Office do a study to look at the practice of abusive and/or
2902 fraudulent demand letters and the negative implications on
2903 the marketplace and then to submit a report, along with
2904 recommendations, to the Members of the House and Senate
2905 Judiciary Committees in a year from now. If this issue has
2906 not been resolved by that point, this will provide Congress
2907 more information to acutely craft legislation to address the
2908 problem.

2909 Mr. Chairman, I urge my colleagues to support this
2910 amendment, and I yield back.

2911 Chairman Goodlatte. Would the gentleman yield before he
2912 yields back?

2913 Mr. Marino. Yes, sir.

2914 Chairman Goodlatte. The chair likes this amendment and
2915 appreciates the gentleman's effort. And this study requires
2916 the PTO to examine the issue of demand letters, and I will
2917 support it. And I hope the other members of the committee
2918 will do as well.

2919 Do other Members seek recognition?

2920 [No response.]

2921 Chairman Goodlatte. If not, the question occurs on the
2922 amendment offered by the gentleman from Pennsylvania.

2923 All those in favor, respond by saying aye.

2924 Those opposed, no.

2925 In the opinion of the chair, the ayes have it. The ayes
2926 have it, and the amendment is agreed to.

2927 For what purpose does the gentleman from North Carolina
2928 seek recognition?

2929 Mr. Watt. I have an amendment at the desk, Watt 38.

2930 Chairman Goodlatte. The clerk will report the
2931 amendment.

2932 Ms. Deterding. Amendment to the amendment in the nature
2933 of a substitute to H.R. 3309, offered by Mr. Watt of North
2934 Carolina. Page 5, strike line 17 --

2935 Chairman Goodlatte. Without objection, the amendment
2936 will be considered as read.

2937 [The amendment of Mr. Watt follows:]

2938

2939 Chairman Goodlatte. And the gentleman is recognized for
2940 5 minutes on his amendment.

2941 Mr. Watt. Thank you, Mr. Chairman.

2942 The American rule that each party to litigation, win or
2943 lose, is only required to pay his or her own attorney's fees
2944 has a long and storied history. It is one of the hallmarks
2945 of our judicial system that fosters open access to the
2946 courts.

2947 I generally oppose legislative efforts to erode the rule
2948 that each party shall bear their own cost because I believe
2949 it is one of the most effective and constructive ways to
2950 equalize imbalances in power. One who has been wronged has
2951 a right to a remedy, and I believe it is generally bad
2952 policy to erect barriers to access to justice.

2953 My amendment would preserve the underlying statutory
2954 exception to the American rule that currently exists in
2955 Title 35, but relax the standard of eligibility for fee
2956 shifting. Section 285 of the Patent Act provides, "A court
2957 in exceptional cases may award reasonable attorney's fees to
2958 the prevailing party."

2959 My amendment simply replaces the "exceptional," the word

2960 "exceptional" with the word "appropriate" in order to give
2961 judges wider latitude to determine when and whether to
2962 depart from the American rule.

2963 I believe my amendment is justified because although
2964 Section 285 has been available in patent cases for over 50
2965 years, only recently have the courts construed the threshold
2966 eligibility for obtaining fees under this section in a
2967 manner that is extremely difficult to meet. The threshold
2968 for authorizing fee shifting I think should be sufficiently
2969 stringent so that the exception doesn't become the rule, but
2970 it should not be so stringent that it becomes meaningless.

2971 Whether that is the case is the question before the
2972 Supreme Court currently in Octane Fitness v. Icon Health
2973 Fitness. In Octane Fitness, the court will consider whether
2974 the two-part test of the Federal circuit that provides that
2975 a case be "objectively baseless" and brought in "subjective
2976 bad faith" to qualify a prevailing party for fees is too
2977 rigid.

2978 Although I think the court will recalibrate the formula
2979 for identifying cases in which fee shifting may be
2980 appropriate, I think my amendment is the preferred approach

2981 over that in the manager's amendment. The chairman has
2982 indicated that his provision is modeled after the Equal
2983 Access to Justice Act. That act, however, was established
2984 to allow private citizens to obtain legal fees in suits in
2985 which they prevail over the U.S. Government. It is not
2986 analogous to fee shifting policies in private lawsuits.

2987 Finally, the manager's amendment, like some of the
2988 moderating sections of the Equal Access to Justice Act, for
2989 example, the authority of the courts "in its discretion to
2990 reduce or deny an award to the extent that the prevailing
2991 party engaged in conduct which has unduly and unreasonably
2992 protracted the final resolution of the matter in
2993 controversy," no such balance or flexibility for the court
2994 is provided in the chairman's proposal.

2995 If we must act before the Supreme Court likely resolves
2996 the question, I urge your vote for an amendment, which more
2997 closely tracks the intent of the original statute, provides
2998 judicial discretion, and restores balance to the threshold
2999 calculation of whether a prevailing defendant is entitled to
3000 fees.

3001 Therefore, Mr. Chairman, I urge my colleagues to support

3002 the amendment, and I yield back.

3003 Chairman Goodlatte. The chair thanks the gentleman and
3004 recognizes himself in opposition to the amendment.

3005 This amendment offers a reformulation of the provision
3006 in the bill. That provision, however, is the product of
3007 months of discussions with stakeholders and the Patent
3008 Office, and good legislative practice prevents us from
3009 accepting entirely new language without an opportunity to
3010 adequately consider its implications.

3011 This replaces the Innovation Act's carefully crafted fee
3012 shifting provision, which adopts the clear and fair
3013 standards of the Equal Access to Justice Act with language
3014 that effectively leaves the award of attorney's fees up to
3015 the discretion of the district court. The only guidance
3016 provided to the court is that fees may be awarded "when
3017 appropriate." There is no guidance at all.

3018 That is no guidance at all and gives litigants, patent
3019 owners, and defendants no notice as to what types of
3020 litigation practices may subject them to an award of
3021 attorney's fees. District judges who are disinclined to
3022 award fees, as some now are, could categorically refuse to

3023 award fees in any case. Other judges could award fees for
3024 any reason they deem appropriate.

3025 The courts and litigants need clear guidance and fair
3026 standards as to when attorney's fees may be awarded. The
3027 Innovation Act provides such guidance and standards. The
3028 gentleman from North Carolina's amendment does not, and for
3029 that reason, I must strongly oppose the amendment.

3030 For what purpose does the gentlewoman from California
3031 seek recognition?

3032 Ms. Lofgren. To strike the last word.

3033 Chairman Goodlatte. The gentlewoman is recognized for 5
3034 minutes.

3035 Ms. Lofgren. I am not going to vote for the amendment,
3036 but I do want to raise the issue that has been raised to me
3037 by a number of Members to make sure that the -- I am
3038 personally comfortable with the language that is in the bill
3039 and the manager's amendment.

3040 But we want to ensure that matters brought in a
3041 legitimate manner are not deterred by this provision. I
3042 think the protections are obvious as it is written, but we
3043 may need to have some further discussions, Mr. Chairman,

3044 between now and the floor.

3045 I would note also that I oppose the English rule in
3046 civil litigation generally. I have voted against it on
3047 numerous occasions in this committee, and I intend to
3048 continue to do so. However, we have -- the Congress has
3049 often provided in narrow circumstances a mandatory fee
3050 shifting scheme to meet a particular set of problems.

3051 The Equal Access to Justice Act has been mentioned, but
3052 we have dozens of cases -- the Whistleblower Protection Act,
3053 the Civil Service Reform Act, the Packers and Stockyards
3054 Act, the Real Estate Settlement Procedures Act. I know this
3055 not because I have memorized all these statutes, but I asked
3056 for a report from CRS on all the occasions when Congress has
3057 provided for a mandatory fee shifting provision.

3058 Those instances have not led to the broad English rule.
3059 And so, to those who are concerned that this is a slippery
3060 slope, I would suggest that the fact that Congress has done
3061 this dozens of times and it has not resulted in the broad
3062 English rule should provide some reassurance.

3063 So while I think that the gentleman's amendment really
3064 eviscerates the bill, I would like some reassurance from the

3065 chairman that we continue to -- we may continue to have some
3066 discussions for those who do have some anxiety between now
3067 and the floor if we are not able to solve it here this
3068 afternoon.

3069 Chairman Goodlatte. Would the gentlewoman yield?

3070 Ms. Lofgren. I would be happy to yield.

3071 Chairman Goodlatte. I thank the gentlewoman for
3072 yielding.

3073 And first, I want to thank her and commend her. She has
3074 championed a number of the provisions in this bill for a
3075 long, long time before the bill even existed, and she has
3076 paid very close attention to many of the issues that we are
3077 debating here today and has worked with many of the Members
3078 on both sides of the aisle. And I want to thank her and
3079 commend her for doing that.

3080 Secondly, I want to assure her that we will continue to
3081 work on this issue. I know the gentleman from New York has
3082 -- Mr. Jeffries has worked very hard on this issue as well,
3083 and we will continue to work with him as well.

3084 I also am not an advocate of the broad English "loser
3085 pays" system, although I do believe that this is an

3086 appropriate circumstance. And with modifications, I could
3087 support it applied in other areas. So there may be
3088 differences of opinion, but I am glad that we definitely
3089 agree on the need for a tight provision with regard to this
3090 type of problem and that the language in the bill can
3091 certainly be worked on further.

3092 There have been a number of exchanges of ideas that have
3093 not worked, including one that I issued early on that was a
3094 modification of the English system with what I think are the
3095 things that need to fix that. That also was rejected.

3096 So I know that there is very close attention being paid
3097 to this, as there should be, and I will continue to work
3098 with you and others who are interested in making sure that
3099 if there are further refinements that can be done, that we
3100 make every effort to do them.

3101 Ms. Lofgren. Well, reclaiming my time, I thank you for
3102 that reassurance, Mr. Chairman. And I -- in the discussions
3103 we have had, I am convinced, and Mr. Jeffries has put in
3104 substantial time and effort trying to address really it is a
3105 drafting issue. I am completely convinced that there is no
3106 disagreement between what I want to do, what you want to do.

3107 I don't want to speak for Mr. Jeffries, but I think
3108 understanding what he wants to accomplish.

3109 I don't think there is a substantive argument. There is
3110 a drafting issue. And as you know, I have been reaching out
3111 to some of the academic worlds to get some assistance on
3112 this point, but it is just not there yet.

3113 So --

3114 Mr. Watt. Would the gentlelady yield?

3115 Ms. Lofgren. If I could finish? I would like to ask
3116 unanimous consent to make the CRS report a part of the
3117 record, and I would like to yield to my colleague Mr. Watt.

3118 Chairman Goodlatte. Without objection, the report will
3119 be made a part of the record.

3120 [The information follows:]

3121

3122 Mr. Watt. I thank the gentlelady for yielding.

3123 And the only response I wanted to make is to her
3124 statement that this somehow -- what we have proposed somehow
3125 eviscerates the bill. I don't agree with that. All we are
3126 doing is changing the word "exceptional" to "appropriate."
3127 And if we weren't doing it in the context of a lot of other
3128 things that were being done in the bill, the gentlelady
3129 might be completely correct that it eviscerates it.

3130 But "appropriate circumstances" then becomes --

3131 Ms. Lofgren. Reclaiming my time, I don't want to assign
3132 any motives to the gentleman. That was not my intent. And
3133 so, I will just say I disagree with the amendment, and we
3134 will leave it at that.

3135 Mr. Watt. Well, I just -- if the gentlelady would
3136 yield?

3137 I ask unanimous consent for 1 additional minute for the
3138 gentlelady.

3139 Chairman Goodlatte. Without objection, the gentlewoman
3140 is recognized for an additional minute.

3141 Mr. Watt. I wasn't taking it personal. I just wanted
3142 to make sure that people understood that the word

3143 "appropriate" in this context will take into account
3144 everything else is in the bill now, and that should give
3145 appropriate leadership to the courts in addressing this.
3146 And hopefully, the Supreme Court will address it anyway
3147 before -- before we get through this whole --

3148 Ms. Lofgren. I understand your belief. I think -- I
3149 think you are incorrect, and that is what makes horse races
3150 and sometimes votes. So, with that, I yield back.

3151 Thank you.

3152 Chairman Goodlatte. For what purpose does the gentleman
3153 from New York seek recognition?

3154 Mr. Nadler. I thank you, Mr. Chairman.

3155 I will speak in support of the amendment.

3156 Chairman Goodlatte. The gentleman is recognized for 5
3157 minutes.

3158 Mr. Nadler. I will speak in support of the amendment,
3159 but with some qualms. I have been, as you know, an opponent
3160 for many years of fee shifting. I think the patent troll
3161 problem is obviously a real problem. We have to try to
3162 address it.

3163 We should not address it in a way that hurts honest

3164 inventors trying to enforce their patents. So you have to
3165 look at it not only from the point of view of the small --
3166 small company that is sued, but also the small inventor who
3167 may have a valid case.

3168 Now, and for reasons that I am not going to repeat here
3169 because we have gone through this many, many times, a lot of
3170 us oppose fee shifting and think the American rule is
3171 proper. Now this amendment is sort of in the middle.

3172 The existing law says the court in exceptional cases may
3173 award reasonable attorney's fees to the prevailing party.
3174 In exceptional cases. In other words, you shouldn't do it
3175 most of the time.

3176 The bill says, "The court shall award to a prevailing
3177 party reasonable fees and other expenses unless the court
3178 finds that the position and conduct of the nonprevailing
3179 party or parties were substantially justified or that
3180 special circumstances make an award unjust."

3181 So the bill goes from the current law, which says
3182 basically that except in exceptional circumstances, you
3183 don't shift the fee to you almost always shift the fee
3184 unless the court finds affirmatively that the case of the

3185 nonprevailing party was substantially justified or that
3186 there were special circumstances.

3187 The bill -- the amendment says the court in exceptional
3188 cases. I am sorry. The amendment tracks the language of
3189 the existing law, but changes the word "exceptional" to
3190 "appropriate." The court in appropriate cases may award
3191 reasonable attorney's fees.

3192 So, presumably, that is somewhere in the middle. It
3193 doesn't say you should usually do it except in exceptional
3194 circumstances, which the bill says. Or you should never do
3195 it except in exceptional circumstances, which the law says.
3196 It says you should do it in appropriate cases.

3197 Now, so it is not as broad as the bill from the point of
3198 view of someone who doesn't like fee shifting. It is not as
3199 good as the current law from the same point of view. But it
3200 also is a mystery because what does "appropriate" mean?

3201 The court in appropriate cases may award reasonable
3202 attorney's fees. What is appropriate? What guidance are we
3203 giving to the court?

3204 We know we have a fairly good idea if we say you
3205 shouldn't do it except in exceptional circumstances, or you

3206 should it except in exceptional circumstances. But when you
3207 say you should do it in appropriate circumstances, I am not
3208 sure what it means.

3209 Mr. Watt. Would the gentleman yield?

3210 Mr. Nadler. In one second. I think it is better than
3211 the bill, which is why I will support it. But I am not sure
3212 what it means, and I will yield.

3213 Mr. Watt. Well, I just wanted to, first of all, if we
3214 could limit this bill, which was our idea, to patent trolls,
3215 an appropriate circumstance would be when the court makes a
3216 determination that a troll has done something. I mean, that
3217 is what we started out trying to do.

3218 The problem is that because the bill has gotten so much
3219 broader and most of the language applies itself to not only
3220 trolls, but to everybody who is litigating cases now, I may
3221 agree with you that appropriate is a difficult term to
3222 define. But you have still got to look at what the bill was
3223 trying to do. What the law was trying to was to stop cases
3224 that were either troll cases or meritless cases, and that
3225 would be an appropriate circumstance.

3226 I yield back to the gentleman.

3227 Mr. Nadler. I thank the gentleman.

3228 And I will simply say that, as I said, I think this is
3229 an improvement on the bill. And yes, the basic problem with
3230 the bill is that it goes way beyond trolls and puts a lot of
3231 restrictions or limits or regulations, whatever you want to
3232 call them, on any patent litigation. And some of which will
3233 be trolls and some of which will be perfectly legitimate
3234 inventors.

3235 And you have to look at the provisions of the bill
3236 knowing it is going to be applied broadly not only to patent
3237 trolls, and therefore, you have to be careful. So I support
3238 the amendment with reservations.

3239 I yield back.

3240 Mr. Johnson. Mr. Chairman?

3241 Chairman Goodlatte. For what purpose does the gentleman
3242 from Georgia seek recognition?

3243 Mr. Johnson. Thank you. To strike the last word.

3244 Chairman Goodlatte. The gentleman is recognized for 5
3245 minutes.

3246 Mr. Johnson. All right. Mr. Chairman, I am in support
3247 of the Watt -- of the Conyers-Watt fee shifting amendment.

3248 I have long supported the principles for reforming
3249 patent litigation to prevent patent troll litigation. But I
3250 also reject the assumption or presumption that all patent
3251 litigation is abusive and all patent plaintiffs are trolls.
3252 I think that there are an abundant supply of plaintiffs who
3253 are taking their case to court to protect their property
3254 interest and their patent, and we should not penalize the
3255 multitude of those folks to get at a number of what we call
3256 "trollers."

3257 And this Watt amendment is a good way of solving this
3258 problem of overbreadth in the remedy that you propose. So
3259 to a word, fees and expenses in appropriate circumstances I
3260 think is the way to go.

3261 Because I do support stopping the patent troll problem,
3262 I can support the Watt amendment because it is an
3263 opportunity for the judges to have a little bit more leeway
3264 to award fees and costs. But if this committee rejects the
3265 good faith attempt of the ranking member's to protect the
3266 interests of nonabusive patent plaintiffs, if the chairman
3267 cannot support that amendment, then I will not be able to
3268 support the legislation.

3269 It essentially creates a "loser pays" litigation system
3270 that would harm small inventors, universities, venture
3271 capital, angel investors, and generally everybody with a
3272 meritorious claim. And then it also opens the door to a
3273 loser pays situation in other substantive areas of
3274 litigation.

3275 And so, I think it creates a substantial and permanent
3276 barrier to invention and entrepreneurship. And with that
3277 having been said, I will yield back the balance of my time.

3278 Chairman Goodlatte. For what purpose does the gentleman
3279 from Florida seek recognition?

3280 Mr. Garcia. Mr. Chairman, I rise in support of the
3281 amendment. We all want to go after patent trolls. This
3282 process began that way. This is a narrow thing that we want
3283 to go after, and there should be very specific rules for
3284 that.

3285 The problem is I agree with Mr. Watt. In the overlying,
3286 overarching size of this legislation, we are capturing a lot
3287 more than was intended. You want to apply a tourniquet to
3288 cut bleeding, but when you apply a tourniquet around the
3289 neck, you kill the patient.

3290 And the reality is that innovation, production, ideas
3291 are the product that America produces. And if people cannot
3292 defend those ideas, if defending those areas becomes too
3293 expensive, then we kill the patient.

3294 There is a problem here. No one sitting up here thinks
3295 that there is not a problem. The problem that we have with
3296 getting to "yes" is that "yes" is rewriting the entire code
3297 as it comes to this. We have a problem. Let us start
3298 applying some pressure on the problem, not kill the patient.

3299 I yield back the balance.

3300 Chairman Goodlatte. For what purpose does the
3301 gentlewoman from Washington seek recognition?

3302 Ms. DelBene. Move to strike the last word.

3303 Chairman Goodlatte. The gentlewoman is recognized.

3304 Ms. DelBene. I agree with Mr. Nadler and Ms. Lofgren
3305 that we need to find that balance. The current language
3306 isn't quite appropriate, and yet we need to make sure that
3307 we allow access to justice for small businesses, for others
3308 who may be concerned about the current language that is in
3309 the bill.

3310 So I want to work with all of you as we continue to find

3311 the appropriate language. If it is not quite this
3312 amendment, that we find something that is suitable because I
3313 think we need more effort to quite get there before we are
3314 done.

3315 Thank you. I yield back.

3316 Chairman Goodlatte. Would the gentlewoman yield?

3317 We will certainly do that. I just want to say to those
3318 who have expressed concerns about small inventors and
3319 venture capitalists that I share their concern, and that is
3320 why the language is written the way it is, to give judges
3321 discretion in those cases where there is that kind of
3322 hardship.

3323 However, I also want to note that there are a great many
3324 small inventors and venture capitalists who support the bill
3325 in general and this provision in particular because they
3326 know that it is one of the tools that patent trolls use to
3327 affect this process by knowing that there are costs that
3328 they will not have to bear that they can impose upon others.

3329 The discovery costs in a typical patent case are much,
3330 much greater on the individual who is defending the
3331 position, be it an inventor or others, than it is on the

3332 proponent. And therefore, if there is not some reasonable
3333 way to balance that out, the problem of incentivizing patent
3334 trolls to make unreasonable demands, knowing that they are
3335 likely to succeed in their demands because of the cost that
3336 is sitting behind that small inventor who is least able to
3337 bear that cost, is the reason why the provision is in the
3338 bill the way it is.

3339 If it can be fine-tuned, I am anxious to work with you,
3340 Ms. Lofgren, and others to fine-tune it.

3341 Ms. DelBene. And Mr. Chair, I appreciate that. I think
3342 it depends on what side you are on when they are defending
3343 their own IP and bring their own patents --

3344 Chairman Goodlatte. No question. The defendant always
3345 is going to be in a position of much greater -- not always,
3346 but almost always in a position of much greater defense
3347 costs because of those discovery costs. And for that
3348 reason, you have to take note of that in having this
3349 disincentive to bring unreasonable demands.

3350 Ms. Lofgren. Would the gentlewoman yield?

3351 Ms. DelBene. Yield to Ms. Lofgren.

3352 Ms. Lofgren. I will be very quick. I wanted to

3353 mention, forgot, that I received just the other day from
3354 Engine, which is really the largest association of start-
3355 ups, a letter supporting this bill. And they specifically
3356 outlined the fee shifting provision in the bill. And it is
3357 entirely start-ups, small guys who are in favor of what is
3358 there.

3359 So I would like to make that a part of the record by
3360 unanimous consent. And I thank the gentlelady for yielding.

3361 Chairman Goodlatte. I thank the gentlewoman. And
3362 without objection, the information will be made a part of
3363 the record, the letter from Engine.

3364 [The information follows:]

3365

3366 Ms. DelBene. I just wanted to yield the remainder of my
3367 time to Mr. Watt.

3368 Mr. Watt. I won't take all the time. I just -- perhaps
3369 most people hadn't noticed that on most of these provisions,
3370 I have actually been out of step with the White House. That
3371 is kind of an interesting position for me in particular.

3372 But on this provision, the White House actually supports
3373 the position that I am taking this time. So I wanted to
3374 point that out.

3375 I think the language of the underlying bill goes too far
3376 in the other direction. I hope we can work out some
3377 balance, as you have indicated. But I don't think this bill
3378 gets us there.

3379 I yield. I thank the gentlelady for yielding.

3380 Chairman Goodlatte. For what purpose does the gentleman
3381 from New York seek recognition.

3382 Mr. Jeffries. Mr. Chairman, I move to strike the last
3383 word.

3384 Chairman Goodlatte. The gentleman is recognized for 5
3385 minutes.

3386 Mr. Jeffries. I just wanted to briefly echo my support

3387 for the amendment being offered by Mr. Watt. I think it is
3388 a very measured attempt to strike the appropriate balance
3389 between dealing with the issue of abusive patent troll
3390 litigation but ensuring that we guard against unintended
3391 consequences in order to protect the inventors, the start-
3392 ups, the tech entrepreneurs. And I would note for the
3393 record that inventors are individuals actually mentioned in
3394 the United States Constitution, and I think we should always
3395 keep in mind their best interests as we move forward.

3396 As it relates to unintended consequences, I think the
3397 GAO did a study that looked at patent litigation between
3398 2007 and 2011 and concluded that the so-called patent troll
3399 problem was limited to about 19 percent of the cases during
3400 that duration. That suggests that approximately 80 percent
3401 of the cases fall into a more legitimate sphere, and that is
3402 exactly the reason why I support this amendment and why many
3403 of us believe that we should proceed with caution to make
3404 sure we guard against unintended consequences and
3405 legislative overreach.

3406 So I commend the distinguished gentleman from North
3407 Carolina and urge support for this amendment.

3408 Chairman Goodlatte. The question occurs on the
3409 amendment offered by the gentleman from North Carolina.
3410 All those in favor, respond by saying aye.
3411 Those opposed, no.
3412 In the opinion of the chair, the noes have it. The
3413 amendment is not agreed to.
3414 The gentleman requests a recorded vote, and the clerk
3415 will call the roll.
3416 Ms. Deterding. Mr. Goodlatte?
3417 Chairman Goodlatte. No.
3418 Ms. Deterding. Mr. Goodlatte votes no.
3419 Mr. Sensenbrenner?
3420 [No response.]
3421 Ms. Deterding. Mr. Coble?
3422 Mr. Coble. No.
3423 Ms. Deterding. Mr. Coble votes no.
3424 Mr. Smith of Texas?
3425 Mr. Smith of Texas. No.
3426 Ms. Deterding. Mr. Smith of Texas votes no.
3427 Mr. Chabot?
3428 Mr. Chabot. No.

3429 Chairman Goodlatte. The clerk will suspend. I just
3430 want to remind everyone here that we will resume immediately
3431 after this series of votes. So as you leave to cast your
3432 vote, you know that ahead of time. Please come back right
3433 after these votes.

3434 The clerk will resume the roll call.

3435 Ms. Deterding. Mr. Chabot votes no.

3436 Mr. Bachus?

3437 [No response.]

3438 Ms. Deterding. Mr. Issa?

3439 Mr. Issa. No.

3440 Ms. Deterding. Mr. Issa votes no.

3441 Mr. Forbes?

3442 [No response.]

3443 Ms. Deterding. Mr. King?

3444 Mr. King. No.

3445 Ms. Deterding. Mr. King votes no.

3446 Mr. Franks?

3447 Mr. Franks. No.

3448 Ms. Deterding. Mr. Franks votes no.

3449 Mr. Gohmert?

3450 [No response.]

3451 Ms. Deterding. Mr. Jordan?

3452 Mr. Jordan. No.

3453 Ms. Deterding. Mr. Jordan votes no.

3454 Mr. Poe?

3455 [No response.]

3456 Ms. Deterding. Mr. Chaffetz?

3457 Mr. Chaffetz. No.

3458 Ms. Deterding. Mr. Chaffetz votes no.

3459 Mr. Marino?

3460 Mr. Marino. No.

3461 Ms. Deterding. Mr. Marino votes no.

3462 Mr. Gowdy?

3463 Mr. Gowdy. No.

3464 Ms. Deterding. Mr. Gowdy votes no.

3465 Mr. Amodei?

3466 Mr. Amodei. No.

3467 Ms. Deterding. Mr. Amodei votes no.

3468 Mr. Labrador?

3469 Mr. Labrador. No.

3470 Ms. Deterding. Mr. Labrador votes no.

3471 Mr. Farenthold?

3472 Mr. Farenthold. No.

3473 Ms. Deterding. Mr. Farenthold votes no.

3474 Mr. Holding?

3475 Mr. Holding. No.

3476 Ms. Deterding. Mr. Holding votes no.

3477 Mr. Collins?

3478 Mr. Collins. No.

3479 Ms. Deterding. Mr. Collins votes no.

3480 Mr. DeSantis?

3481 Mr. DeSantis. No.

3482 Ms. Deterding. Mr. DeSantis votes no.

3483 Mr. Smith of Missouri?

3484 Mr. Smith of Missouri. No.

3485 Ms. Deterding. Mr. Smith of Missouri votes no.

3486 Mr. Conyers?

3487 Mr. Conyers. Aye.

3488 Ms. Deterding. Mr. Conyers votes aye.

3489 Mr. Nadler?

3490 Mr. Nadler. Aye.

3491 Ms. Deterding. Mr. Nadler votes aye.

3492 Mr. Scott?

3493 Mr. Scott. Aye.

3494 Ms. Deterding. Mr. Scott votes aye.

3495 Mr. Watt?

3496 Mr. Watt. Aye.

3497 Ms. Deterding. Mr. Watt votes aye.

3498 Ms. Lofgren?

3499 Ms. Lofgren. No.

3500 Ms. Deterding. Ms. Lofgren votes no.

3501 Ms. Jackson Lee?

3502 [No response.]

3503 Ms. Deterding. Mr. Cohen?

3504 [No response.]

3505 Ms. Deterding. Mr. Johnson?

3506 Mr. Johnson. Aye.

3507 Ms. Deterding. Mr. Johnson votes aye.

3508 Mr. Pierluisi?

3509 Mr. Pierluisi. No.

3510 Ms. Deterding. Mr. Pierluisi votes no.

3511 Ms. Chu?

3512 Ms. Chu. Aye.

3513 Ms. Deterding. Ms. Chu votes aye.

3514 Mr. Deutch?

3515 Mr. Deutch. Aye.

3516 Ms. Deterding. Mr. Deutch votes aye.

3517 Mr. Gutierrez?

3518 [No response.]

3519 Ms. Deterding. Ms. Bass?

3520 Ms. Bass. Aye.

3521 Ms. Deterding. Ms. Bass votes aye.

3522 Mr. Richmond?

3523 Mr. Richmond. Aye.

3524 Ms. Deterding. Mr. Richmond votes aye.

3525 Ms. DelBene?

3526 Ms. DelBene. Aye.

3527 Ms. Deterding. Ms. DelBene votes aye.

3528 Mr. Garcia?

3529 Mr. Garcia. Aye.

3530 Ms. Deterding. Mr. Garcia votes aye.

3531 Mr. Jeffries?

3532 Mr. Jeffries. Aye.

3533 Ms. Deterding. Mr. Jeffries votes aye.

3534 Chairman Goodlatte. The gentleman from Alabama?

3535 Mr. Bachus. No.

3536 Ms. Deterding. Mr. Bachus votes no.

3537 Chairman Goodlatte. The gentleman from Texas?

3538 Mr. Gohmert. No.

3539 Ms. Deterding. Mr. Gohmert votes no.

3540 Chairman Goodlatte. The clerk will report.

3541 [Pause.]

3542 Chairman Goodlatte. The gentleman from Virginia?

3543 Mr. Forbes. No.

3544 Ms. Deterding. Mr. Forbes votes no.

3545 Chairman Goodlatte. Has every Member voted who wishes

3546 to vote?

3547 [No response.]

3548 Chairman Goodlatte. The clerk will report.

3549 Ms. Deterding. Mr. Chairman, 12 Members voted aye; 23

3550 Members voted nay.

3551 Chairman Goodlatte. And the amendment is not agreed to.

3552 And there is 4 minutes and 1 second remaining in the

3553 vote on the floor, and 45 Members have already voted. So

3554 you need to get over there and vote.

3555 The committee will stand in recess.

3556 [Recess.]

3557 Chairman Goodlatte. The committee will reconvene. When
3558 the committee recessed, we were considering amendments to
3559 the manager's amendment to H.R. 3309. And for what purpose
3560 does the gentleman from California seek recognition?

3561 Mr. Issa. I have an amendment at the desk.

3562 Chairman Goodlatte. The clerk will report the
3563 amendment.

3564 Ms. Deterding. Amendment to the amendment in the nature
3565 of a substitute to H.R. 3309, offered by Mr. Issa of
3566 California, page 43, insert the following after line 9.

3567 Chairman Goodlatte. Without objection, the amendment
3568 will be considered as read.

3569 [The amendment of Mr. Issa follows:]

3570

3571 Chairman Goodlatte. And the gentleman is recognized for
3572 5 minutes on his amendment.

3573 Mr. Watt. Mr. Chairman? Mr. Chairman? Reserving the
3574 right to object, it is not listed on our list, and I
3575 actually have not seen it, so I am just --

3576 Mr. Issa. Mel, you are going to like this one.

3577 Chairman Goodlatte. And it was filed today along with
3578 many amendments. The gentleman is recognized.

3579 Mr. Issa. Thank you. In order to eliminate the
3580 reserve, let me assure you this is a very minor, but
3581 important, request in the bill. What we are doing is we are
3582 asking for a GAO study in order to deal with some of the
3583 areas that are not currently covered in the bill,
3584 particularly litigation involving business method patents.
3585 Additionally, we ask that the study come back 6 months after
3586 enactment.

3587 And the specific purpose for this is that we know, and I
3588 think on a completely bipartisan and bicameral basis, that
3589 business method patents do need to be addressed, and that,
3590 in fact, a major part of the litigation growth has come in
3591 that area. So since this is, if you will, not fully

3592 addressed in the current legislation, I would ask that this
3593 amendment be allowed in order for us to be able to come back
3594 again at some future time, 6 months from enactment, and
3595 begin the process of seriously looking at business method
3596 patents.

3597 Additionally, Mr. Chairman, I will take this quick
3598 opportunity to thank you for what you already put into the
3599 bill. Some years ago when we passed the Patent Pilot Bill,
3600 like many pieces of legislation, it was a pilot. It
3601 remained to be seen whether or not it would succeed and be
3602 embraced, finding that 14 district courts are now
3603 participating in a program with over 70 judges designated as
3604 patent pilot judges. My office has been in contact with
3605 those individuals, and I appreciate a great deal your
3606 extending the life of that legislation by 10 years in this
3607 bill, which will go a long way toward professionalizing the
3608 court.

3609 I thank the chairman for his leadership, and I would
3610 yield to the chairman.

3611 Chairman Goodlatte. The chair thanks the gentleman for
3612 yielding. He thanks him for offering this amendment, and I

3613 support the amendment. I think that this is a very
3614 important issue that has some provisions in this bill
3615 related to it, but I think more can be done. And a study
3616 examining how the volume and nature of litigation involving
3617 business patents is being handled by the PTO and the courts
3618 would be a very valuable thing for this committee to have.
3619 And this requires a study and report back to the Congress
3620 not later than 6 months after the enactment of the bill. So
3621 I thank the gentleman for the contribution and support.

3622 Mr. Issa. And reclaiming my time, are there any
3623 questions from Mr. Watt now that he has seen it?

3624 Mr. Watt. I thank the gentleman for yielding. I simply
3625 did not see it on the list of amendments and did not know
3626 what it -- so I was really reserving the right to have her
3627 keep reading until I saw it.

3628 Mr. Issa. I thank the gentleman, and I certainly would
3629 say the same thing to ensure that it was what it appeared to
3630 be. But I thank you, and I yield back.

3631 Chairman Goodlatte. The chair thanks the gentleman.
3632 For what purpose does the gentlewoman from California seek
3633 recognition?

3634 Ms. Chu. I move to strike the last word.

3635 Chairman Goodlatte. The gentlewoman is recognized for 5
3636 minutes.

3637 Ms. Chu. I support Mr. Issa's amendment that would
3638 require a GAO study on the amount and nature of litigation
3639 involving business method patents. I believe that the study
3640 may reveal how patent quality may affect our greater
3641 economy, and the results of the study may also show us if
3642 any further work needs to be done in this space.

3643 I think more could have been done to address patent
3644 quality in this bill, but I believe this is a good addition
3645 to the bill that we are considering today. I thank my
3646 colleague from California for bringing this forward, and I
3647 urge a yes vote.

3648 Chairman Goodlatte. The chair thanks the gentlewoman.
3649 For what purpose does the gentleman from Texas seek
3650 recognition?

3651 Mr. Farenthold. Move to strike the last word.

3652 Chairman Goodlatte. The gentleman is recognized for 5
3653 minutes.

3654 Mr. Farenthold. I just briefly wanted to express my

3655 support as well for the gentleman from California's
3656 amendment. While generally opposed to studies, at some
3657 point you have got to do your homework when you are looking
3658 at reforming systems that are in place. This is a good way
3659 for us to get our research done, do our homework, and be
3660 prepared to address this important issue in future
3661 legislation. And I yield back.

3662 Chairman Goodlatte. The chair thanks the gentleman.
3663 Who seeks recognition?

3664 [No response.]

3665 Chairman Goodlatte. If not, the question occurs on the
3666 amendment offered by the gentleman from California. All
3667 those in favor, respond by saying aye.

3668 Those opposed, no.

3669 In the opinion of the chair, the ayes have it, and the
3670 amendment is agreed to.

3671 For what purpose does the gentleman from North Carolina
3672 seek recognition?

3673 Mr. Watt. I have an amendment at the desk, Mr.
3674 Chairman.

3675 Chairman Goodlatte. The clerk will report the

3676 amendment.

3677 Mr. Watt. It is number 40. I think it is the last one

3678 I have.

3679 Ms. Deterding. Amendment to the amendment in the nature

3680 of a substitute to H.R. 3309, offered by Mr. Watt of North

3681 Carolina, page 13, insert the following --

3682 Chairman Goodlatte. Without objection, the amendment is

3683 considered as read.

3684 [The amendment of Mr. Watt follows:]

3685

3686 Chairman Goodlatte. And the gentleman is recognized for
3687 5 minutes on his amendment.

3688 Mr. Watt. Thank you, Mr. Chairman. In 2011, Congress
3689 established the Patent Pilot Program. The program is a 10-
3690 year project in which judges who volunteer to try patent
3691 cases will receive specialized training in patent law and
3692 case management. The principle goal of the legislation
3693 establishing the pilot program was to boost the expertise
3694 and highly complex, labor intensive patent litigation among
3695 district court judges.

3696 The legislation also requires the administrative office
3697 of the U.S. courts and the Federal Judicial Center to
3698 analyze the operation of the program and report certain
3699 statistics back to Congress, including the length of time to
3700 disposition of a case, and the reversal rate of judges
3701 participating in the program in comparison to non-
3702 participating judges who are not receiving the specialized
3703 training. Fourteen districts from around the country were
3704 selected for participation in the Patent Pilot Program.
3705 Some were selected because they were among top districts in
3706 which the largest number of patent suits were filed the year

3707 before the program was established. Others were selected
3708 because they had developed local patent rules to govern the
3709 management of patent cases.

3710 Within these 14 districts, those from which we have
3711 heard the most complaints about, is the proliferation of
3712 troll litigation, interestingly enough. This fact is
3713 significant because my amendment lasers in on these
3714 districts in the pilot program, including those where a
3715 concentration of troublesome litigation is said to exist.
3716 My amendment takes the most litigation-centered provisions
3717 of the Innovation Act and makes them applicable only to
3718 those districts participating in the pilot program. Many of
3719 these districts are already developing local rules that
3720 touch upon scheduling, discovery, case management, and
3721 claims construction.

3722 These otherwise untested, yet significant, fundamental
3723 reforms in the Innovation Act can be implemented in a
3724 limited area on a temporary basis by judges who are both
3725 eager to litigate patent cases and who are experienced in
3726 handling these cases. Before imposing the major changes in
3727 this bill throughout the judiciary, my amendment would allow

3728 pilot project judges to experiment with the various
3729 pleading, discovery, and fee shifting provisions in the
3730 bill. Subsequent study can then reveal which reforms worked
3731 and which did not. The study will be a major value add in
3732 that it can replace the anecdotal narratives with more
3733 extensive empirical evidence that is largely absent from the
3734 record of our consideration in this bill.

3735 So all of this is an attempt to limit the application of
3736 the bill to these 14 jurisdictions. And I ask my colleagues
3737 to support the measure, and yield back.

3738 Chairman Goodlatte. The chair thanks the gentleman, and
3739 recognizes himself in opposition to the amendment. This
3740 amendment offers a reformulation of the provisions in the
3741 bill. That provision, however, is the product of months of
3742 discussion with stakeholders in the Patent Office, and good
3743 legislative practice prevents us from accepting entirely new
3744 language without the opportunity to consider its
3745 implications.

3746 This restricts the scope of the important reforms in
3747 Section 3 to only a few judicial districts in the country.
3748 Manufacturers and small businesses, however, need relief

3749 from abuse patent litigation practices wherever they occur
3750 in the United States and wherever they are located and their
3751 businesses are located, not just in these few districts.
3752 And it is for this reason that I strongly oppose the
3753 amendment.

3754 Mr. Issa. Would the gentleman yield?

3755 Chairman Goodlatte. I would be happy to yield to the
3756 gentleman from California.

3757 Mr. Issa. Because of the hook to the patent pilot, I
3758 see an opportunity that I would love to work with the
3759 gentleman and the chairman on. Our bill when it was passed
3760 in 2011 did call for a 5-year study, and I certainly would
3761 hope that we could work together, assuming this amendment is
3762 voted down, we could work together to clarify whether that
3763 study, which is due in a little over 2 years from now,
3764 could, in fact, include some of the important areas that the
3765 gentleman is interested in without having the limitation
3766 currently in the first part of the language, because I
3767 certainly do think that the ideas he has tries to make sure
3768 that the patent pilot reports its progress, which is
3769 scheduled 5 years after enactment, and has some worthiness.

3770 But, I, too, could not support limiting the overall
3771 legislation to just the patent pilot judges. I think that
3772 would create confusion in a number of districts around the
3773 country. And I thank the gentleman for yielding.

3774 Mr. Watt. Would the gentleman yield?

3775 Chairman Goodlatte. I would be happy to yield to the
3776 gentleman from North Carolina.

3777 Mr. Watt. It sounds like a wonderful idea that Mr. Issa
3778 has advanced. I think it would be good to have his study
3779 encompass those pilot programs and see what impact this is
3780 having in those pilot areas, whether you pass the amendment
3781 or not.

3782 Chairman Goodlatte. Well, the chair continues his
3783 opposition to the amendment for the reasons stated, but I do
3784 agree with the gentleman from California. And I am pleased
3785 the gentleman from North Carolina also sees the benefit of
3786 using that study to determine whether the implementation of
3787 changes that may take place once this bill is through the
3788 entire process and signed into law, that study should
3789 include looking at whatever information is gathered over the
3790 remaining time of the study about that. If that is the

3791 intention of the gentleman from California and the gentleman
3792 from North Carolina, I would be happy to work with both of
3793 them on language that we could take to the floor.

3794 Mr. Watt. So if the chair would yield. Do you think we
3795 need to put something in the bill to make that explicit, or
3796 is the legislative history we are developing at this moment
3797 sufficient? One of the concerns I have about Mr. Issa's
3798 earlier amendment is it seemed to me that we could do the
3799 same thing simply with a letter to the agency asking them to
3800 do the study. Perhaps a letter would be sufficient without
3801 the necessity of an amendment.

3802 Chairman Goodlatte. I do not think it needs to be an
3803 amendment offered here this evening. If it becomes
3804 necessary to include it in the legislative language, we will
3805 work with you as we go to the floor to make sure it gets in.
3806 I do not think it is a very controversial provision, so I do
3807 not think it would be difficult to add to the bill. But if
3808 it can be done by a letter to the PTO, I would be happy to
3809 work with you on discussing that as well.

3810 With that, the question occurs on the amendment offered
3811 by the gentleman from North Carolina.

3812 All those in favor, respond by saying aye.

3813 Those opposed, no.

3814 In the opinion of the chair, the noes have it, and the
3815 amendment is not agreed to.

3816 I think the gentlewoman from California should be
3817 recognized next. For what purpose does the gentlewoman seek
3818 recognition?

3819 Ms. Lofgren. To offer an amendment, Lofgren-Farenthold-
3820 Chu 37.

3821 Chairman Goodlatte. The clerk will report the
3822 amendment.

3823 Ms. Deterding. Amendment to the amendment in the nature
3824 of a substitute to H.R. 3309, offered by Ms. Lofgren of
3825 California, page 45, line 9, strike "district court claim
3826 construction," and insert "prosecution history." Page 45,
3827 strike line 21 and all that follows --

3828 Chairman Goodlatte. Without objection, the amendment
3829 will be considered as read.

3830 [The amendment of Ms. Lofgren follows:]

3831

3832 Chairman Goodlatte. And the gentlewoman is recognized
3833 for 5 minutes on her amendment.

3834 Ms. Lofgren. Thank you, Mr. Chairman. There is
3835 substantial concern about the provision in the bill relative
3836 to broadest reasonable interpretation, which is why Mr.
3837 Farenthold, Ms. Chu, and I were to offer this amendment.

3838 The America Invents Act created two new procedures to
3839 challenge invalid patents before the PTO, the inter parties'
3840 review and the post-grant review. And these procedures
3841 allow the PTO to review patents of questionable validity
3842 more cheaply and efficiently than through litigation.

3843 Now, the PTO is using a standard of broadest reasonable
3844 interpretation in these review proceedings, and it is
3845 appropriate that PTO uses that same broadest, reasonable
3846 interpretation standard in its initial assessment of
3847 patentability and in its ex parte review proceedings. Yet
3848 Section 9(c) of the bill would eliminate this BRI standard
3849 for these post-grant review procedures, and instead require
3850 the PTO to construe patent claims as though they were in a
3851 civil action; thereby eliminating the BRI standard and
3852 required the PTO to use the standard on par with the courts.

3853 But the PTO is not a court. As written, the bill, I
3854 believe, would hinder the Office's ability to narrow or
3855 clarify ambiguous patents, a major reason for the troll
3856 problem to begin with. The inter parties' and post-grant
3857 review programs are only a year old, and I think it would be
3858 imprudent to weaken them now.

3859 Now, this provision, in my judgment, has nothing to do
3860 with curbing abusive patent litigation, which is the focus
3861 of this bill, and I think the provision could harm patent
3862 quality, introduce confusion into the PTO's examination of
3863 patents, and raise the cost of these reviews. I would note
3864 that the PTO has opposed this section publicly in their
3865 testimony, and many technology companies and other
3866 stakeholders have also urged that the section be removed.

3867 However, the amendment would not strip this section from
3868 the bill entirely. I have endeavored to compromise with
3869 proponents requiring the PTO to abandon the BRI standard.
3870 Accordingly, the amendment would preserve the broadest
3871 reasonable interpretation standard for inter parties' and
3872 post-grant review as established in the AIA, and clarify
3873 that the PTO has discretion to consider the prosecution

3874 history in any court record during these reviews.

3875 Now, in reviewing this matter and discussing this with
3876 the chairman and other members of the committee, it has
3877 become clear to me that we were unable to reach consensus on
3878 this extremely important matter. And, therefore, I want to
3879 make sure that both Mr. Farenthold and Ms. Chu have an
3880 opportunity to use their full 5 minutes of advocacy for the
3881 bill. But at the conclusion of that, it would be my intent
3882 to withdraw the amendment, and hopefully we can continue the
3883 discussion between here and the floor.

3884 Chairman Goodlatte. Would the gentlewoman yield?

3885 Ms. Lofgren. I would be happy to yield.

3886 Chairman Goodlatte. I thank the gentlewoman for
3887 yielding. I thank her for offering this amendment. I thank
3888 her for considering the larger picture here with regard to
3889 this issue. And I am fully committed to working with her to
3890 find a resolution to that as we move forward, and I make
3891 that commitment to Mr. Farenthold and Ms. Chu, all of whom
3892 have worked in good faith to try to address this issue. And
3893 I think we should continue to work on it.

3894 Ms. Lofgren. I would yield to Mr. Farenthold.

3895 Chairman Goodlatte. If he wants his own time, I will
3896 yield him time.

3897 Ms. Lofgren. Then I yield back, Mr. Chairman.

3898 Mr. Farenthold. I move to strike the last word.

3899 Chairman Goodlatte. The gentleman is recognized for 5
3900 minutes.

3901 Mr. Farenthold. Thank you very much. I am happy to
3902 hear we are going to continue to work on this issue. We
3903 have a serious problem in this country with patent trolls.
3904 This bill is designed to curb some of the excesses and
3905 abuse, in my opinion, in some cases, outright extortion we
3906 are seeing from patent trolls. But in doing so, we are
3907 taking away what is a low cost alternative to litigation in
3908 some cases, and taking away something the Patent and
3909 Trademark Office has used for a long time with the broadest
3910 reasonable interpretation guidelines. And this is something
3911 the PTO wants to continue to do. This amendment would have
3912 allowed that to continue, coming with a quick, low cost way
3913 to challenge bad patents and improve them.

3914 It is actually something that works out for both
3915 plaintiffs and attorneys. As we all know, once you get into

3916 Federal court, you are talking millions of dollars. It is
3917 definitely a cost savings and a more efficient way to deal
3918 with some of the disputes. And I actually think it would be
3919 a way that we would help with the patent troll problem.

3920 I do look forward to working with the chairman. I
3921 really do think there is a way we can continue to preserve
3922 this process without creating a poison pill to the
3923 underlying bill, which is, I believe, absolutely critical to
3924 innovation and to helping existing small businesses be
3925 protected from abusive litigation. And I will yield back.

3926 Chairman Goodlatte. The chair thanks the gentleman.
3927 And for what purpose does the gentlewoman from California,
3928 Ms. Chu, seek recognition?

3929 Ms. Chu. I move to strike the last word.

3930 Chairman Goodlatte. The gentlewoman is recognized for 5
3931 minutes.

3932 Ms. Chu. I support this amendment. It would preserve
3933 the broadest reasonable interpretation standard that is
3934 currently in use successfully at the PTO. And it would
3935 allow PTO to consider the prosecution history in any court
3936 record during inter parties' and post-grant review in making

3937 their assessment.

3938 The manager's amendment as written would require the PTO
3939 to construe patent claims and inter parties' review and
3940 post-grant review as though they were in a civil action.
3941 That change would hinder the PTO's ability to narrow or
3942 clarify ambiguous patents. Also, since PTO uses the BRI
3943 standard in its initial assessment of patentability, this
3944 change would introduce inconsistency in PTO's examination of
3945 the patents.

3946 The current BRI standard is working. It keeps costs
3947 low, and it expedites the review process. Changing the
3948 standard would require additional evidence and testimony for
3949 district court proceedings, which costs money and slows down
3950 the process. This would increase costs for the PTO and the
3951 parties involved in these proceedings.

3952 These PTO reviews are low cost alternatives to district
3953 court litigation. The amendment would have kept it that
3954 way. Even though this amendment will be withdrawn, I hope
3955 that this issue can be addressed in the future. And I yield
3956 back.

3957 Chairman Goodlatte. The chair thanks the gentlewoman.

3958 Anyone else seeking recognition on this?

3959 Ms. Lofgren. Mr. Chairman, if no one else --

3960 Chairman Goodlatte. I will recognize myself and yield
3961 to the gentlewoman.

3962 Ms. Lofgren. Thank you, Mr. Chairman. I would withdraw
3963 the amendment at this point, noting that we will continue to
3964 work on the principles involved here, and I thank the
3965 gentleman for yielding.

3966 Chairman Goodlatte. I thank the gentlewoman. Without
3967 objection, the amendment is withdrawn.

3968 And the chair recognizes the gentlewoman from
3969 California.

3970 Ms. Lofgren. I have an amendment at the desk, Lofgren
3971 38.

3972 Chairman Goodlatte. The clerk will report the
3973 amendment.

3974 Ms. Deterding. Amendment to the amendment in the nature
3975 of a substitute to H.R. 3309, offered by Ms. Lofgren of
3976 California, page 56, insert after line 20 the following new
3977 subsection --

3978 Chairman Goodlatte. Without objection, the amendment I

3979 think has been read.

3980 [The amendment of Ms. Lofgren follows:]

3981

3982 Ms. Lofgren. That is right.

3983 Chairman Goodlatte. And the gentlewoman is recognized
3984 for 5 minutes on her amendment.

3985 Ms. Lofgren. Thank you, Mr. Chairman. This amendment
3986 is very important to me, and as the chairman knows, we have
3987 discussed this extensively. I think it is very important
3988 that we clarify the scope of the prior art in the grace
3989 period that we have under current law. Under the AIA, the
3990 existence of prior art will defeat a patent application, and
3991 the current law describes several activities as prior art,
3992 including patents described in a printed publication or in
3993 public use on sale or otherwise available to the public.

3994 Now, I think one of the great things, one of the unique
3995 and valuable things, about the American patent system is
3996 that in the one-year grace period for prior art, an
3997 inventor's own prior art will not defeat the inventor's
3998 patent if a patent application is filed within a year of the
3999 prior art. However, this grace period only covers
4000 disclosures, and this on its face does not encompass the
4001 full range of prior art activities.

4002 Now, this was supposed to be corrected in the AIA, and

4003 as the chairman may recall, we had an amendment considered
4004 during the committee markup, an amendment that we prevailed
4005 on in the committee. We won the vote. However, that change
4006 was later blocked and removed in the Rules Committee, and
4007 since that time, the PTO has issued a rulemaking that covers
4008 prior art activities at disclosure. And the ambiguity has
4009 been somewhat dealt with by these rules, but the ambiguity
4010 remains in the statute. And I think it is important that
4011 ambiguity be clarified by statute, and this amendment would
4012 do that by stating that the activities listed as prior art
4013 in the statute qualify for the grace period as was
4014 originally intended in the AIA and as this committee voted
4015 to do during the mark up of the AIA.

4016 Now, I have worked quite diligently with the chairman,
4017 with many others, to see if we could not reach consensus on
4018 this matter, and regrettably, we have failed to do so, but
4019 the good news is that as we have worked through those
4020 issues, I think there is a growing recognition that this is
4021 a problem that needs a resolution. Some of the lead
4022 academics in the country are talking to sort through this
4023 issue.

4024 I note that the academic community is alarmed because
4025 the current situation has really put a chill on the
4026 publication of articles relative to scientific advances, and
4027 that is not something that is good for the country, and it
4028 is not something that is good for innovation.

4029 So this is something that absolutely needs a resolution.
4030 I am going to withdraw the amendment today because we cannot
4031 get consensus on the timeframe. But I know from your
4032 conversations, Mr. Chairman, that you have agreed to, I
4033 mean, without being conclusionary, to continue to work on
4034 this. And I think it is of such importance, and I would be
4035 happy to yield to you to confirm your interest in helping to
4036 find resolution.

4037 Chairman Goodlatte. If the gentlewoman would yield.
4038 First of all, I thank you very much for your work on this
4039 amendment. I have worked with you, and I know that as
4040 recently as yesterday, members of my staff, and your staff,
4041 and I believe yourself, and two very prominent patent
4042 attorneys discussed this --

4043 Ms. Lofgren. And professors.

4044 Chairman Goodlatte. And professors. They not only

4045 practice, but they teach -- had a detailed discussion about
4046 this issue, and consensus was not achieved. But I
4047 certainly, while I have concerns about the amendment, I am
4048 also very much willing to work with the gentlewoman to
4049 address her concerns with the current state of the law. And
4050 if we can find that common ground, we will succeed in
4051 pushing this further. So I am happy to work with you in
4052 that regard.

4053 Ms. Lofgren. I appreciate that, Mr. Chairman. I would
4054 note that there is a second issue that relates to prior art.
4055 Maybe that is not the term that should be used according to
4056 one of the professors. But the ability to essentially keep
4057 under the AIA practices secret for an extended period of
4058 time, and then essentially allow a trade secret to pop up as
4059 a patent at a later date. That may also be something that
4060 needs to be addressed. But I think the two are severable,
4061 and hopefully we can consensus in the days ahead. So for
4062 tonight, I will withdraw the amendment, and thank you for
4063 your willingness to work with me on this.

4064 Chairman Goodlatte. If the gentlewoman would yield, the
4065 chair would again reiterate our willingness to work with her

4066 on the first part of that. The second part I think we have
4067 a basic disagreement about which cause that secret forms of
4068 prior art, and we have a concern about the amendment doing
4069 that. But again, I am always willing to discuss good ideas
4070 regarding patents. But the commitment is with regard to the
4071 first one, which is what the intent of that effort started
4072 out being, and then other things were uncovered as a part of
4073 the process.

4074 Ms. Lofgren. I understand that, but if you would yield
4075 further --

4076 Chairman Goodlatte. Your time.

4077 Ms. Lofgren. -- I think that as the discussions among
4078 the academics have proceeded in a more vigorous way, we can
4079 always learn by listening to each other. And there may be
4080 growing consensus on that point as well.

4081 Chairman Goodlatte. Well, if that develops, we
4082 certainly would be willing to work with the parties. And
4083 without objection, the amendment is withdrawn.

4084 And the chair would inquire of the gentlewoman from
4085 Texas if she seeks recognition.

4086 Ms. Jackson Lee. Yes, Mr. Chairman, I am going to offer

4087 at this time amendment number 16.

4088 Chairman Goodlatte. The clerk will report the
4089 amendment.

4090 Ms. Deterding. Amendment to the amendment in the nature
4091 of a substitute to HR. 3309, offered by Ms. Jackson Lee of
4092 Texas, page 22, strike lines 18 through 21, and insert the
4093 following --

4094 Chairman Goodlatte. Without objection, the amendment is
4095 considered as read.

4096 [The amendment of Ms. Jackson Lee follows:]

4097

4098 Chairman Goodlatte. And the gentlewoman from Texas is
4099 recognized on her amendment for 5 minutes.

4100 Ms. Jackson Lee. I thank the gentleman. I ask
4101 unanimous consent to strike the last word.

4102 Chairman Goodlatte. The gentlewoman is recognized for 5
4103 minutes.

4104 Ms. Jackson Lee. Mr. Chairman, I am just going to take
4105 a moment to recount some important history that I was a part
4106 of as we moved forward to pass the America Invents Act in
4107 2011, which was a major overhaul of the patent law. And I
4108 think one of the interesting points that I heard was the
4109 importance of making sure that the Patent Office was well
4110 funded, which raises questions in this legislation.

4111 This amendment is not particularly dealing with the
4112 funds, but I wanted to raise the point that we have always
4113 done patent law in a bipartisan manner. We have always
4114 worked together with amendments even to the floor. And I
4115 know that as we started earlier today we had a packed house,
4116 which reflected, I guess, the sense that there was a large
4117 majority for this bill. But I think Mr. Conyers made a very
4118 interesting and non-provocative statement, along with Mr.

4119 Watt, and that is that we have typically done this
4120 legislation in a process of deliberation and collaboration
4121 and over a period more than a day or two, as I reflect, or
4122 at least it appeared at that time. So I hope that as we
4123 make our way to the floor and as we make our way to having a
4124 bill that has come out of the Senate and out of the House,
4125 we will have an opportunity for that cooperation.

4126 My amendment raises a concern for a group that maybe
4127 does not have a lot of friends at this time, and that is
4128 small businesses. I have an amendment that I believe is
4129 important for innovation for the small guys. It is well
4130 documented that our innovation ecosystem founded on patents
4131 drives economic growth and job creation in the United States
4132 from Houston, to Silicon Valley, to Washington, D.C.
4133 Therefore, we must act thoughtfully and with great caution
4134 as we pursue reforms to a system which took 60 years to
4135 change, and then here we are today doing what I think are
4136 some catastrophic changes, although there are supporters for
4137 it.

4138 As I indicated, the Smith-Leahy bill, America Invents
4139 Act, took a long time, but it was a seismic change that

4140 moved the Patent Office from the 1800s to the 21st century.
4141 A number of the provisions in this bill may be well
4142 intentioned, but they have undesirable consequences for the
4143 patent system as a whole. They have the potential to
4144 undermine the enforceability of all patent rights, no matter
4145 how valuable the patent, and thus, potentially incentivized
4146 infringement.

4147 My amendment modifies the manager's amendment to ensure
4148 that all of those small businesses that are motivated by
4149 this provision are protected. This amendment seeks to
4150 protect innocent users without jeopardizing the patent
4151 system as a whole and all of the benefits. It amends the
4152 Section 5 definition of "covered customer" to ensure that
4153 small businesses are protected.

4154 As I quote from the *Federalist Papers*, "Number 18," it
4155 happened, but too often the deputies of the strongest cities
4156 awed and corrupted those of the weaker, and that judgment
4157 went in favor of the most powerful party. Now, I know we
4158 are not into reading the *Federalist Papers*, but I think if
4159 we are going to protect larger entities, we need to protect
4160 smaller businesses. And I offer some comment from a letter

4161 from Entrepreneurs for Growth that says, "Regarding the
4162 current" -- this letter was dated November 20th, 2013
4163 regarding the Jackson Lee amendment. "Regarding the current
4164 reform proposals, while we have many overall concerns, the
4165 dominating issue at this time is a customer state provision
4166 which in its current form will severely limit the ability of
4167 startups to attract needed capital by lowering the overall
4168 value of their intellectual property. Therefore, we support
4169 the Jackson Lee amendment." It was addressed to me, and it
4170 said, "We support your amendment that would limit the
4171 current customer stay language, but still protects the true
4172 end user, or mom and pop shops, as attended by the
4173 language."

4174 I ask unanimous consent to introduce this letter into
4175 the record, Mr. Chairman.

4176 Mr. Bachus. [Presiding] Without objection.

4177 [The information follows:]

4178

4179 Ms. Jackson Lee. And so, I would ask my colleagues in
4180 the spirit of understanding or finding a way to make sure
4181 that our small businesses are equally, or the startups that
4182 are certainly the genesis of the Silicon Valley -- the
4183 Facebooks, Googles, and many others -- the startup surge, if
4184 you will, of the last decade, and this decade, and decades
4185 to come. start out as small businesses. And I frankly
4186 believe that this is a good amendment to provide for that
4187 reform, and I ask my colleagues to support the Jackson Lee
4188 amendment.

4189 Mr. Bachus. Are you through with your 5 minutes?

4190 Ms. Jackson Lee. With that, I yield back my time.

4191 Mr. Bachus. Thank you. At this time I claim 5 minutes
4192 to speak in opposition to the amendment. I oppose this
4193 amendment and ask my colleagues to do so. The amendment
4194 offers a reformulation of the provisions of the bill, and
4195 the provision in the legislation is a product of months of
4196 discussions with stakeholders in the Patent Office. Any
4197 good legislative practice prevents us from accepting
4198 entirely new language without an opportunity adequately to
4199 consider its implications.

4200 Having said that, let us do look at the amendment and
4201 what we can tell just by one reading of it. This amendment
4202 unduly restricts the protections offered by Section 5 to
4203 customers. The underlying provision that the gentlelady
4204 wishes to amend already covers small businesses. Every
4205 small business that this amendment purports to protect is
4206 already protected by the Innovation Act. It offers no
4207 protection to any additional small businesses. But while it
4208 does not do what it promises, it does do harm.

4209 This provision would prevent many retailers,
4210 restaurateurs, and grocery stores from benefitting from the
4211 important protections of Section 5. Customer suits against
4212 a party that neither manufactures or develops the product
4213 accused of infringement are inherently abusive, regardless
4214 of the nature of the customer. Infringement suits should
4215 always be directed at the party that made the product and
4216 understands how it operates. That is the party that is best
4217 situated to litigate the lawsuit. It is for these and other
4218 reasons that I strongly oppose the amendment.

4219 Ms. Jackson Lee. Would the gentleman yield?

4220 Mr. Bachus. I will.

4221 Ms. Jackson Lee. Let me thank the gentleman for his
4222 comments, but let me take the opening sentence. As I look
4223 at the amendment, it is intended to do as it says, is to
4224 provide coverage exemption, if you will, for small
4225 businesses that are not covered, and particularly as the
4226 letter from Entrepreneurs for Growth, startups that have
4227 generated -- the giants of Silicon Valley -- they did not
4228 start as giants. They started as innovative ideas. And as
4229 this bill is presently constructed, it would not allow that.

4230 But the point that I want to make to the chairman, and I
4231 thank him, is that you are right. We are doing amendments
4232 today that have not had hearings and not had extensive
4233 review. Some of us believe, and some of the individuals
4234 that are raising concerns, is that this bill has not had the
4235 kind of extensive review, though I know there are those who
4236 want to quickly run to the finish line, that we did in the
4237 legislation in 2011. This is an overhaul as well, and we
4238 have always been deliberative in this committee on patent
4239 law. So I would just ask my colleagues to consider this.
4240 It looks as if we will be considering it as we go to the
4241 floor because we have a full house here this afternoon. But

4242 I would just say that the small businesses and startups
4243 should be considered in this bill.

4244 I never believed, Mr. Chairman, and I will yield back to
4245 you, that we have to do a patent bill that is contentious.
4246 I frankly believe these ideas are too exciting, too
4247 embracing of America's genius, and America's inventiveness,
4248 and America's economic engine, that we can do these
4249 together. So I would ask my colleagues to consider my
4250 amendment and recognize the small businesses that are
4251 impacted by this legislation.

4252 Mr. Bachus. I thank the lady.

4253 Ms. Jackson Lee. I yield back.

4254 Mr. Bachus. Let me just say this. I think one thing
4255 she said that I can agree with, and that is that while it is
4256 not her intent to delay this legislation, that is exactly
4257 what this amendment would do because it would, again, open
4258 up a controversy and slow this legislation down. And let me
4259 again repeat, bottom line: the provision that the
4260 gentlelady has drafted would prevent many, many retailers,
4261 restaurateurs, and grocery stores from benefitting from
4262 Section 5. And I think in a bipartisan way I have heard

4263 people commit to protecting those very groups of citizens
4264 and businesses.

4265 So my time has expired. Are there others wishing to
4266 speak for or against the amendment?

4267 [No response.]

4268 Mr. Bachus. Seeing none, call the roll.

4269 The question occurs on the amendment.

4270 All those in favor, say aye.

4271 All those opposed, say nay.

4272 It appears the nays have it by a very slim, slim
4273 margin.,

4274 [Laughter.]

4275 Mr. Bachus. Well, having heard no request for a roll
4276 call vote, is there any other amendment? Are there other
4277 amendments to be considered?

4278 Ms. Jackson Lee. Yes. I would like to go forward, Mr.
4279 Chairman, en block to take amendments number 11 and number
4280 17, Jackson Lee.

4281 Mr. Bachus. All right. The lady is recognized to speak
4282 in favor of the two amendments en block.

4283 Ms. Jackson Lee. Let me get my papers, Mr. Chairman,

4284 and I would be happy to be recognized. And I hope the
4285 gentleman will have time to hand them out.

4286 Mr. Bachus. I think I said for the record that the
4287 amendment was not agreed to. The gentlelady is recognized.

4288 Ms. Jackson Lee. Thank you. Amendment number 11 is an
4289 amendment that, again, in the Judiciary Committee, it is
4290 hard for me to accept a denial of what I think is part of
4291 the fair, equitable system of justice. And that is to deal
4292 with the attorney's fees. And so, I have an amendment that
4293 strikes Section 3, which has eliminated the ability for
4294 attorney's fees. This requires a loser to pay attorney's
4295 fees and expenses. The loser pays policy prevents
4296 plaintiffs from receiving their fair compensation and deters
4297 them from pursuing meritorious patent infringement claims.

4298 It creates a situation where experienced institutional
4299 defendants with enormous resources and expert legal talent
4300 can bully injured plaintiffs into unfair settlements because
4301 of the enormity of the attorney's fees, and the fact that
4302 the burden of not only paying your own fees, but paying that
4303 of the defendant. This causes plaintiffs to move into
4304 unfair settlements due to the risk associated with losing

4305 even a potentially successful case. Patent litigation is
4306 already extremely risky and costly for plaintiffs, and loser
4307 pays creates yet another disincentive for inventors and
4308 small businesses to defend their rights.

4309 I might also suggest that it likewise hauls universities
4310 into the courthouse and others who do not have the deep
4311 pockets that any large entity may have that would allow them
4312 to take the brunt of a lawsuit that may be legitimate. And
4313 so I would ask that my amendment to strike that language,
4314 that takes away the language that puts the burden on a loser
4315 who may have had a legitimate case that causes them to stop
4316 in their tracks and seek a settlement for fear of having to
4317 pay attorney's fees, I believe is not constructive, and
4318 certainly not the American way of justice to be able to
4319 provide a fair playing field or even playing field to be
4320 able to work on these matters. So that is amendment number
4321 11.

4322 And then amendment number 17 that I have asked to be en
4323 block is an amendment that amends Section 8 to give the PTO
4324 a more reasonable time period to complete its reports. And
4325 I think it is important to note that we do not have to,

4326 again, rush to judgment. And I believe that my amendment
4327 simply moves back the dates so that the PTO Office can
4328 continue to do the superior job on the four studies as
4329 required in this bill, again, in the name of fairness to the
4330 little person to be able to ensure that the PTO can provide
4331 the adequate reports that it has.

4332 And, Mr. Chairman, I will divide the question. I would
4333 like the question divided and see whether our amendments
4334 could be supported separately. So they are en block, and I
4335 would like to divide the question on the vote.

4336 Mr. Bachus. Without objection. You want a vote on each
4337 amendment?

4338 Ms. Jackson Lee. Separate amendments, that is right.

4339 Mr. Bachus. That is fine. That is fine.

4340 Ms. Jackson Lee. But I have taken them. I have
4341 discussed them en block. In simplicity, one is to not have
4342 the loser pay the attorney's fees, which is Section 3, and I
4343 think that is a chilling effect for small guys, including
4344 restaurants, and retailers, and others who are not as big as
4345 the big, big companies. And I do not think it helps in
4346 frivolous lawsuits, which is always a term that is used.

4347 These are serious issues that are dealing with infringement
4348 and other issues. And I think there are serious issues,
4349 and, therefore, to burden that individual with having to pay
4350 attorney's fees if they lose rather than they have an even
4351 way of dealing with it stops people in their tracks.

4352 And lastly, I think we need to give the PTO time to do
4353 their reports that will be helpful to this Congress. With
4354 that, I yield back.

4355 Mr. Bachus. Thank you. I recognize myself. I will
4356 discuss both of these. I am in opposition to both of them.
4357 I thank the gentlelady for her amendment 17. We understand,
4358 I guess I would say, what the amendment is trying to
4359 address, and that is to give sufficient time for these
4360 studies to be completed. But we need to vet this idea more,
4361 particularly the way that the gentlelady has approached it
4362 because what she has done in her amendment is she has -- and
4363 let me say this. We worked very closely with PTO and other
4364 agencies on these provisions to establish appropriate
4365 deadlines. And they have not objected to these deadlines
4366 and have said that they are appropriate.

4367 This amendment effectively eliminates any deadline for

4368 the submission of some of these important studies. We found
4369 that to be very problematic with Dodd-Frank, for instance.
4370 Some of it still has not been completed. The amendment only
4371 requires that some of the studies be submitted on the date
4372 of completion. That means there is no time limit to others.
4373 While we want to give the agencies, as I said, time to do
4374 these studies, we do not want to extend them into
4375 perpetuity, and that is what unfortunately as drafted it
4376 does. But I think this side would work with you.

4377 Ms. Jackson Lee. I did not hear -- I am sorry.

4378 Mr. Bachus. Let me, because I have only got a --

4379 Ms. Jackson Lee. Well, I did not hear what you said.

4380 "As drafted," I am sorry.

4381 Mr. Bachus. It allows some of the studies. It does not
4382 have a date of completion. They could go on basically ad
4383 infinitum. I used the word "perpetuity."

4384 Now, the second amendment which is your number 11, so I
4385 am discussing these in reverse order, I think you are going
4386 to find bipartisan opposition to this because this provision
4387 that you are striking, you are striking Section 3, and
4388 Section 3 is a critical part of the balance that the

4389 Innovation Act is achieving by reigning in patent troll
4390 behavior and protecting innovation.

4391 The changes that this amendment offers would destabilize
4392 the careful balance that supports the bill. Our provision
4393 has been a product of about seven others with much
4394 deliberation and discussion among stakeholders. But here is
4395 the essence of your amendment. The Innovation Act
4396 recognizes the need to strengthen the pleading requirements
4397 for patent infringement cases. Under current law, a
4398 patentee may file a complaint of patent infringement with
4399 only four basic allegations. One, just simply stating that
4400 the court has jurisdiction -- that does not tell the
4401 defendant anything -- second, a statement that the plaintiff
4402 owns the asserted patent; three, a statement that the
4403 defendant is infringing on that patent; and four, a
4404 statement that the plaintiff has notified the defendant of
4405 the alleged infringement.

4406 With respect to the third allegation, statement of
4407 infringement, a patentee need only assert that the defendant
4408 has imported, made, used, sold, or offered to sell a product
4409 embodied in the patent innovation. And as I read earlier, I

4410 read what one technology company in California with about
4411 100 employees, where they had received a demand letter to
4412 pay up. And all it said in that demand letter was that you
4413 violated our patent, and for proof of how you violated it,
4414 go to your own website, which is pretty absurd. And I
4415 introduced that in the record, and I would ask members on
4416 both sides to take a look at that letter.

4417 The second letter which I introduced, I did not talk
4418 about. But all their letter said is you violated our
4419 patent, and it then outlined for two pages how much it would
4420 cost them to defend the lawsuit, and said it would be
4421 cheaper for you to settle because if you do not settle, we
4422 are going to ask for all this discovery, and we are going to
4423 do all these things, and it is going to cost you a whole
4424 bunch of money. But there was never any specificity or even
4425 any illusion as to what the violation was, just that we are
4426 going to sue you. It is going to cost you a lot money. You
4427 need to settle.

4428 I am going to introduce for the record an additional
4429 objection to the amendment, but I am going to ask that
4430 members oppose both of them.

4431 Is there anyone else wishing to be -- the question is on
4432 the Jackson Lee amendment.

4433 Mr. Johnson. Mr. Chairman?

4434 Mr. Bachus. Yes, Mr. Johnson?

4435 Mr. Johnson. I move to strike the last word.

4436 Mr. Bachus. The member is recognized for 5 minutes.

4437 Mr. Johnson. Thank you, Mr. Chairman. I rise in
4438 support of this amendment, and I yield to Ms. Jackson Lee.

4439 Ms. Jackson Lee. Mr. Chairman, I thank the gentleman
4440 from Georgia and also for his leadership.

4441 Mr. Chairman, I am going to take issue with your
4442 wonderful description. Though well intended, I think it is
4443 incorrect. In fact, striking Section 3 adds to the justice
4444 system and helps to ensure an equal playing field. This
4445 does not promote the trolls. In actuality, Section 3
4446 eliminates notice pleading on Form 18, and requires a
4447 plaintiff that has a legitimate case to have overly detailed
4448 claim charts and information that may not be readily
4449 available.

4450 Section 3 also may dismiss early meritorious cases, will
4451 face an early dismissal because corporation defendants will

4452 simply refuse to provide information necessary to plead the
4453 case. Additionally, Section 3 places severe limits on
4454 discovery that would inhibit an inventor's and small
4455 business' ability to access vital documents. Section 3
4456 converts a neutral claim construction process into one that
4457 favors large corporate defendants.

4458 So here lies, I think, the imbalance that some of us
4459 have made a point. I can very well stand with protecting
4460 against these enormously litigious and without value cases.
4461 But you cannot have a broad brush. You cannot say that all
4462 these cases are such. But you are having an unequal playing
4463 field. And I offer as such universities, research
4464 institutes or institutions, maybe in that same category,
4465 that they do not have all of the facts about what they
4466 perceive to be violations against them. So I am happy to
4467 look forward to working on this matter. I think it has
4468 value to it. I think it creates an even playing field, and
4469 I certainly think it creates in this room a platform for a
4470 better sense of justice.

4471 And with respect to the amendment, on completing the
4472 reports, Mr. Chairman, in perpetuity is not what my intent

4473 was. It was to extend it for a short period of time to make
4474 sure that all reports are completed. And I think the Patent
4475 Office has the appropriate judgment to ensure that it is not
4476 forever, but that they get the reports done as they should
4477 get them done. So I ask my colleagues, first, to support my
4478 amendment number 11, and to support my amendment number 17.

4479 Mr. Bachus. Thank you. Mr. Johnson, would you yield
4480 the balance of your time?

4481 Mr. Johnson. I will.

4482 Mr. Bachus. Thank you. The gentlelady is striking
4483 Section 3. And in doing so, she is going to allow a
4484 practice to continue to where all you have to do is say I am
4485 suing you, you violated a patent, and you violated it, and I
4486 quote, "by importing, making, using, selling, or offering to
4487 sell a product" embodied in my patent. And it is all guess
4488 work. The gentlelady talked about notice pleading, and
4489 basically all you are getting is a notice you are being
4490 sued. You have no idea of the specificity.

4491 And as the second letter I introduced earlier said, it
4492 is going to cost you a lot of money. You ought to just
4493 settle because you may not win, but we are going to require

4494 you to produce all your email, all your documents, all your
4495 letters. And let me tell you, just the production of
4496 documents can cause a company of 10, 20, 40 or 100 employees
4497 to spend hundreds of thousands of dollars, and that is what
4498 these patent trolls know. So I would urge a no vote on her
4499 amendment which strikes all of Section 3.

4500 Ms. Jackson Lee. Would the gentleman yield?

4501 Mr. Bachus. And it was constructed with bipartisan
4502 support. Actually Mr. Johnson's time -- yes, I have 16. He
4503 will have to yield you 16 seconds.

4504 [Laughter.]

4505 Ms. Jackson Lee. Let me just quickly say I do not
4506 believe that will be the result of my amendment. I think
4507 what it does is just have an even playing field that those
4508 lesser prosperous individuals with serious claims will have
4509 the opportunity to have representation. And I yield back.

4510 Mr. Bachus. Thank you. If you could yield 2 seconds.
4511 If they have serious claims, they ought to outline them and
4512 tell you what they are.

4513 The question is now on the Jackson -- Mr. Nadler is
4514 recognized for 5 minutes.

4515 Mr. Nadler. Thank you. I move to strike the last word.

4516 Mr. Bachus. The gentleman is recognized.

4517 Mr. Nadler. Thank you. I rise in support of Ms.

4518 Jackson Lee's amendment, and I will be brief. The four
4519 provisions of Section 3 are mostly an all-star list of all
4520 the provisions that people have been trying to get in
4521 general having nothing to do with patents, but to limit
4522 plaintiffs' rights, fee shifting and so forth. We have
4523 debated that in this committee and in other forums many
4524 times.

4525 There is no question we have a real problem with patent
4526 trolls. Just throwing in all these provisions that are
4527 designed to tilt the playing field against plaintiff in
4528 favor of defendants, which is what it does, is an unfair
4529 method of dealing with that problem. Some of the other
4530 provisions of this bill are reasonable and fair. Most of
4531 this Section 3 is not. And it also ignores what I brought
4532 up earlier, which is that, you know, patent trolls are one
4533 thing, but legitimate inventors seeking to defend their
4534 patents, this tilts the field just as much against them.

4535 Now, for instance, in discovery, the notice pleading has

4536 been the practice in the country for a long time because if
4537 you have to make it that much more specific, you cannot do
4538 that until you get discovery very often. And so, you are
4539 putting the plaintiff in a catch 22. But since we do have
4540 the patent trolls provision, if we had a provision here that
4541 applied some of the provisions of Section 3 to people other
4542 than the inventors, maybe we could talk about that. That
4543 might make more sense because then a small inventor trying
4544 to preserve his rights would not be completely hamstrung.

4545 So I commend the gentlelady from Texas for this
4546 amendment, and I certainly hope that as the bill progresses
4547 we can make it more reasonable in some of these aspects. I
4548 yield back.

4549 Ms. Jackson Lee. Would the gentleman yield?

4550 Mr. Nadler. Yes, I will yield to the gentlelady.

4551 Ms. Jackson Lee. Yes. I want to just emphasize very
4552 briefly the gentleman's point. You are absolutely right.
4553 The economic engine from invention has not necessarily come
4554 from the conglomerates. I am not sure what size, if I
4555 might, physical plant, whether or not Mr. Ford was in his
4556 house when he thought of the Model T, or his engineers, or

4557 his family members. I am not sure how he started. But he
4558 is certainly, in a metaphoric manner, an example of how
4559 Americans have come to have this great economy. People have
4560 been in their garages, they have been in their offices.
4561 They have been in their professorial offices, they have been
4562 in research institutions, and they have generated enormous
4563 opportunity for America. And I believe there are big guys
4564 doing things and little guys doing things. And I do not
4565 believe that what they are doing is frivolous or that they
4566 are trolling. They are trying to protect, and they may have
4567 limited means to do so. And I think it is important to give
4568 them that opportunity. I yield back.

4569 Mr. Nadler. Thank you. Reclaiming my time, let me just
4570 comment. I do not know about Mr. Ford and Model Ts, but the
4571 Wright brothers were in the bicycle shop, in a little
4572 bicycle shop in Ohio. And, you know, it is interesting to
4573 read the lobbying memos on both sides of this bill. The
4574 people supporting the bill talk about the small
4575 manufacturer, the small business that is beset by a patent
4576 troll. The people opposing the bill talk about the small
4577 inventor who cannot defend his patent.

4578 And the fact is they are both correct, and you have to
4579 have a balanced bill that will really deal with the patent
4580 trolls, but without hurting the small inventor trying to
4581 defend his patent. This bill, with these provisions of this
4582 bill especially, are not properly balanced. So I urge the
4583 adoption of the gentlelady's amendment. I yield back.

4584 Chairman Goodlatte. [Presiding] The chair recognizes
4585 himself in opposition to the amendment. We have, and I will
4586 ask unanimous consent to make part of the record a long
4587 list, and I will not read the long list, but a long list of
4588 businesses large and small. The gentlewoman from
4589 California, Ms. Lofgren, has already put into the record the
4590 letter from Engine, which is a premiere organization
4591 representing small startup inventors who support the
4592 legislation, including these provisions, because they help
4593 the small inventor, and that is important to stress.

4594 The small inventor is subject to a process whereby they
4595 face substantial economic costs when they are approached
4596 with a demand letter or a lawsuit from a patent troll, and
4597 they need these protections just as much as a large
4598 corporation does. So I believe that this is a well-balanced

4599 piece of legislation, and I strongly oppose the amendment.

4600 The question occurs on the amendment offered by the
4601 gentlewoman from Texas. She has asked that the two
4602 amendments, which are being considered en block, be divided.
4603 And the question will be first on Jackson Lee amendment
4604 number 11.

4605 All those in favor, respond by saying aye.

4606 Those opposed, no.

4607 In the opinion of the chair, the noes have it, and the
4608 amendment is not agreed to.

4609 The question is now on the amendment offered by the
4610 gentlewoman from Texas, Ms. Jackson Lee, on amendment number
4611 17. The question is on Jackson Lee number 17.

4612 All those in favor, respond by saying aye.

4613 Those opposed, no.

4614 In the opinion of the chair, the noes have it.

4615 Ms. Jackson Lee. I thank the chairman.

4616 Chairman Goodlatte. Does the gentlewoman have
4617 additional amendments?

4618 Ms. Jackson Lee. I think not. Thank you so very much.

4619 Chairman Goodlatte. The chair would inquire of the

4620 gentleman from Georgia, for what purpose does he seek
4621 recognition?

4622 Mr. Johnson. I have an amendment at the desk, Mr.
4623 Chairman.

4624 Chairman Goodlatte. The clerk will report the
4625 amendment.

4626 Mr. Johnson. It is amendment number 40.

4627 Ms. Deterding. Amendment to the amendment in the nature
4628 of a substitute to H.R. 3309, offered by Mr. Johnson of
4629 Georgia, page 23 --

4630 Chairman Goodlatte. Without objection, the amendment
4631 will be considered as read.

4632 [The amendment of Mr. Johnson follows:]

4633

4634 Chairman Goodlatte. And the gentleman is recognized for
4635 5 minutes on his amendment.

4636 Mr. Johnson. Thank you, Mr. Chairman. I offer an
4637 amendment to strike Section 6 of the Innovation Act. It is
4638 abundantly clear that neither the bench nor the Bar supports
4639 the Innovation Act because Section 6 functions as a direct
4640 amendment of the Federal Rules of -- excuse me -- a direct
4641 amendment of the Federal Rules by legislation. The Judicial
4642 Conference, which is an intensively deliberative body of
4643 judges who supervise the administration of the judiciary,
4644 argues that Section 6 will "undermine rather than further
4645 the development of sound rules and practices," to curb
4646 patent litigation abuse. The American Bar Association
4647 likewise calls Section 6 an unhealthy precedent that could
4648 lead to balkanization of the administration of justice. As
4649 the House Judiciary Committee, we should be the first line
4650 of defense for the courts, judges, and the Bar against
4651 legislative encroachment.

4652 The complete independence of the judiciary is essential
4653 to the Constitution and our democracy. Section 6 of this
4654 bill encroaches on Article 3 of our Constitution. It is

4655 well understood that the framers intended an independent
4656 judiciary to be central to the judicial power granted by
4657 Article 3 of our Constitution. James Madison, the principal
4658 drafter of the Bill of Rights, said in the first session of
4659 Congress that an independent judiciary is "an impenetrable
4660 bulwark against every assumption of power in the legislative
4661 or executive." Alexander Hamilton made the same argument a
4662 year earlier in the *Federalist Papers*. Hamilton said in
4663 "Federalist 78" that nothing short than the complete
4664 independence of the courts of justice is essential. Without
4665 judicial independence, Hamilton concluded that all the
4666 reservations of particular rights or privileges would amount
4667 to nothing.

4668 There is also clear proof in the structure of the
4669 Constitution which creates three independent branches of
4670 government that are co-equal. Section 6 runs counter to the
4671 core of judicial power, the ability to make its own rules of
4672 procedures. A judiciary that cannot make its own rules is
4673 not independent. I am convinced that the framers would not
4674 support this legislation.

4675 This legislation has been hastily introduced and brought

4676 to this point, a markup. Mr. Chairman, haste makes waste,
4677 and haste also makes mistakes. I believe that expedience
4678 does not justify a bill that dictates the procedure of the
4679 courts, robs judges of their discretion, undermines the
4680 separation of powers of each branch of government, and
4681 erodes the impenetrable bulwark against every assumption of
4682 power in the legislative or executive branches.

4683 We have had a rich tradition of respecting the
4684 independence of the third branch of government. Congress
4685 enacted the Rules Enabling Act almost 80 years ago to
4686 authorize the judiciary to promulgate rules of procedure,
4687 which have the force of law and the effect of law. Never
4688 once has the Supreme Court found that the Federal judiciary
4689 overstepped its rulemaking authority. This process is
4690 deliberative, precise, and surgical. It is not subject to
4691 campaign contributions. It is public, it is non-partisan,
4692 and it does not act in haste, rushing to put forth rules
4693 with only two days' notice.

4694 A rational argument can be made that the courts are
4695 under attack from the legislative branch. The Senate
4696 refuses to confirm the President's judicial nominees,

4697 creating a shortage of judges during a time when caseloads
4698 are increasing, and judges have to fight for their cost of
4699 living increases, which they have been deprived of. And
4700 then on top of that, cuts to the judiciary budget are
4701 already damaging our courts beyond repair. The Federal
4702 judiciary is less than one percent of the Federal budget,
4703 and it is made up of people, not programs. That is why
4704 Chief Justice John Roberts, a Bush appointee, warned in July
4705 that cuts to the judicial branch are substantially more
4706 crippling than cuts to other government sectors.

4707 I am a man of justice. I practiced law for 27 years and
4708 was a member of both the Bar and the bench. Despite my
4709 strong support for patent litigation reform, I cannot vote
4710 for a flawed, hurried solution that will hurt the judiciary.
4711 I cannot vote for that, and I urge my colleagues to stand
4712 with me and support my amendment to ensure the independence
4713 of the Federal judiciary.

4714 And, Mr. Chairman, I do appreciate your indulgence with
4715 the clock. And with that, I will yield back.

4716 Chairman Goodlatte. The chair thanks the gentleman, and
4717 recognizes himself in opposition to the amendment. The

4718 gentleman is definitely right about one thing: the courts
4719 do not act in haste. These issues have been before this
4720 Congress for 10 years, and the Congress has not acted in
4721 haste either. But during that entire time, the courts have
4722 not addressed these concerns.

4723 Earlier the committee rejected an amendment offered by
4724 the gentleman from Virginia, Mr. Scott, that struck the
4725 first three subsections of Section 6. This amendment
4726 strikes all of Section 6, including the recognition that is
4727 contained in this act, that the need to address the
4728 currently lopsided nature of discovery in patent cases
4729 exists. The high price of defending patent infringement
4730 lawsuits is due in large part to out of control discovery
4731 costs. Under current law, even plaintiffs asserting
4732 meritless infringement claims often are allowed to impose
4733 expensive discovery demands on accused infringers even
4734 before the parties know what the patent legally covers.

4735 The Innovation Act provides a solution that would limit
4736 initial discovery to the essential documents that both sides
4737 need in order to litigate their claims and defenses, such as
4738 information about the patents in suits and core technical

4739 documents about the accused's devices. Importantly, the
4740 disclosure of any computer code under this proposal would
4741 occur as part of initial discovery only on motion and only
4742 after the production of core documents.

4743 This provision will help the courts to begin to reign in
4744 out of balance discovery demands. Those out of balance
4745 discovery demands most hurt the small inventor or the small
4746 business that is subject to a lawsuit from someone claiming
4747 to assert a claim because they are the least able to afford
4748 those expensive discovery costs. And this provides an
4749 orderly, efficient, well thought out way to make sure that
4750 the most expensive discovery costs are postponed until we
4751 find out whether there is a good underlying suit.

4752 This provision is vital to protecting defendants from
4753 abusive litigation. Often those engaged in patent trolling
4754 have few, if any, documents while defendants have legitimate
4755 businesses with a large amount of information. By forcing
4756 defendants to produce documents, such plaintiffs drive up
4757 the cost of litigation, forcing defendants to settle. This
4758 provision reduces that abuse. If someone really wants
4759 additional discovery, they should understand the cost of

4760 that discovery.

4761 Further, Section 365(n) of the Title 11 prevents a
4762 bankruptcy trustee from terminating licensees to patents and
4763 other intellectual property of the debtor. When Congress
4764 enacted Section 365(n) in 1989, it recognized that allowing
4765 patent and other IP licenses to be revoked in bankruptcy
4766 would be extremely disruptive to the economy and damaging
4767 both to patent owners and to licensing manufacturers.
4768 Manufacturers often invest billions of dollars in reliance
4769 on their right to practice a technology pursuant to a
4770 license. Allowing the license to be eliminated in
4771 bankruptcy would create commercial uncertainty and would
4772 undermine manufacturing investment.

4773 In recent years, some bankruptcy trustees have tried to
4774 subvert the protections of Section 365(n) for U.S.
4775 intellectual property by filing for bankruptcy in foreign
4776 countries and demanding that U.S. courts extend comity to
4777 terminations of licenses to U.S. intellectual property in
4778 the foreign proceeding. This provision eliminates this
4779 uncertainty and guarantees that licenses to U.S. patents and
4780 other IP will always be protected in U.S. courts by adding

4781 Section 365(n) to the mandatory provisions that must apply
4782 in a Chapter 15 proceeding when applicable.

4783 The amendment also clarifies that trademark licenses
4784 also are protected against being voided in bankruptcy. This
4785 has led to unnecessary litigation and to circuit splits over
4786 whether licenses to trademarks can be terminated in
4787 bankruptcy proceedings. This amendment fills this gap in
4788 the law and ensures that all intellectual property licensees
4789 are protected in bankruptcy proceedings, effectively
4790 codifying the 7th Circuit's approach to this case. For
4791 these reasons and more, which I will not burden the
4792 committee with, I strongly oppose this amendment.

4793 The question occurs on the amendment offered by the
4794 gentleman from Georgia.

4795 All those in favor, respond by saying aye.

4796 Those opposed, no.

4797 In the opinion of the chair, the noes have it, and the
4798 amendment is not agreed to.

4799 For what purpose does the gentleman from Georgia seek
4800 recognition?

4801 Mr. Johnson. I would ask for a recorded vote on that.

4802 Chairman Goodlatte. A recorded vote is requested. The
4803 clerk will call the roll.

4804 Ms. Deterding. Mr. Goodlatte?

4805 Chairman Goodlatte. No.

4806 Ms. Deterding. Mr. Goodlatte votes no.

4807 Mr. Sensenbrenner?

4808 [No response.]

4809 Ms. Deterding. Mr. Coble?

4810 [No response.]

4811 Ms. Deterding. Mr. Smith of Texas?

4812 Mr. Smith of Texas. No.

4813 Ms. Deterding. Mr. Smith of Texas votes no.

4814 Mr. Chabot?

4815 [No response.]

4816 Ms. Deterding. Mr. Bachus?

4817 [No response.]

4818 Ms. Deterding. Mr. Issa?

4819 [No response.]

4820 Ms. Deterding. Mr. Forbes?

4821 Mr. Forbes. No.

4822 Ms. Deterding. Mr. Forbes votes no.

4823 Mr. King?

4824 [No response.]

4825 Ms. Deterding. Mr. Franks?

4826 Mr. Franks. No.

4827 Ms. Deterding. Mr. Franks votes no.

4828 Mr. Gohmert?

4829 [No response.]

4830 Ms. Deterding. Mr. Jordan?

4831 Mr. Jordan. No.

4832 Ms. Deterding. Mr. Jordan votes no.

4833 Mr. Poe?

4834 Mr. Poe. No.

4835 Ms. Deterding. Mr. Poe votes no.

4836 Mr. Chaffetz?

4837 Mr. Chaffetz. No.

4838 Ms. Deterding. Mr. Chaffetz votes no.

4839 Mr. Marino?

4840 Mr. Marino. No.

4841 Ms. Deterding. Mr. Marino votes no.

4842 Mr. Gowdy?

4843 Mr. Gowdy. No.

4844 Ms. Deterding. Mr. Gowdy votes no.
4845 Mr. Amodei?
4846 Mr. Amodei. No.
4847 Ms. Deterding. Mr. Amodei votes no.
4848 Mr. Labrador?
4849 Mr. Labrador. No.
4850 Ms. Deterding. Mr. Labrador votes no.
4851 Mr. Farenthold?
4852 Mr. Farenthold. No.
4853 Ms. Deterding. Mr. Farenthold votes no.
4854 Mr. Holding?
4855 Mr. Holding. No.
4856 Ms. Deterding. Mr. Holding votes no.
4857 Mr. Collins?
4858 Mr. Collins. No.
4859 Ms. Deterding. Mr. Collins votes no.
4860 Mr. DeSantis?
4861 Mr. DeSantis. No.
4862 Ms. Deterding. Mr. DeSantis votes no.
4863 Mr. Smith of Missouri?
4864 Mr. Smith of Missouri. No.

4865 Ms. Deterding. Mr. Smith of Missouri votes no.
4866 Mr. Conyers?
4867 Mr. Conyers. Aye.
4868 Ms. Deterding. Mr. Conyers votes aye.
4869 Mr. Nadler?
4870 Mr. Nadler. No.
4871 Ms. Deterding. Mr. Nadler votes no.
4872 Mr. Scott?
4873 Mr. Scott. Aye.
4874 Ms. Deterding. Mr. Scott votes aye.
4875 Mr. Watt?
4876 Mr. Watt. Aye.
4877 Ms. Deterding. Mr. Watt votes aye.
4878 Ms. Lofgren?
4879 [No response.]
4880 Ms. Deterding. Ms. Jackson Lee?
4881 Ms. Jackson Lee. Aye.
4882 Ms. Deterding. Ms. Jackson Lee votes aye.
4883 Mr. Cohen?
4884 Mr. Cohen. Pass
4885 Ms. Deterding. Mr. Johnson?

4886 Mr. Johnson. Aye.

4887 Ms. Deterding. Mr. Johnson votes aye.

4888 Mr. Pierluisi?

4889 Mr. Pierluisi. No.

4890 Ms. Deterding. Mr. Pierluisi votes no.

4891 Ms. Chu?

4892 Ms. Chu. No.

4893 Ms. Deterding. Ms. Chu votes no.

4894 Mr. Deutch?

4895 Mr. Deutch. No.

4896 Ms. Deterding. Mr. Deutch votes no.

4897 Mr. Gutierrez?

4898 Mr. Gutierrez. Aye.

4899 Ms. Deterding. Mr. Gutierrez votes aye.

4900 Ms. Bass?

4901 [No response.]

4902 Ms. Deterding. Mr. Richmond?

4903 Mr. Richmond. Aye.

4904 Ms. Deterding. Mr. Richmond votes aye.

4905 Ms. DelBene?

4906 Ms. DelBene. No.

4907 Ms. Deterding. Ms. DelBene votes no.
4908 Mr. Garcia?
4909 Mr. Garcia. Aye.
4910 Ms. Deterding. Mr. Garcia votes aye.
4911 Mr. Jeffries?
4912 Mr. Jeffries. Aye.
4913 Ms. Deterding. Mr. Jeffries votes aye.
4914 Chairman Goodlatte. The gentleman from North Carolina?
4915 Mr. Coble. No.
4916 Ms. Deterding. Mr. Coble votes no.
4917 Chairman Goodlatte. The gentleman from Alabama?
4918 Mr. Bachus. No.
4919 Ms. Deterding. Mr. Bachus votes no.
4920 Chairman Goodlatte. The gentleman from Ohio?
4921 Mr. Chabot. No.
4922 Ms. Deterding. Mr. Chabot votes no.
4923 Chairman Goodlatte. The gentlewoman from California?
4924 Ms. Lofgren. No.
4925 Ms. Deterding. Ms. Lofgren votes no.
4926 Chairman Goodlatte. Has every member voted who wishes
4927 to vote?

4928 [No response.]

4929 Chairman Goodlatte. The clerk will report.

4930 Ms. Deterding. Mr. Chairman, nine members voted aye, 25
4931 members voted nay.

4932 Chairman Goodlatte. And the amendment is not agreed to.
4933 For what purpose does the gentleman from Louisiana seek
4934 recognition?

4935 Mr. Richmond. Mr. Chairman, I think I have an amendment
4936 at the desk, and I will offer amendment number 20 on the
4937 roster, which is amendment number 32. And I am withdrawing
4938 the amendment listed as 33.

4939 Chairman Goodlatte. The clerk will report the amendment
4940 listed as amendment number 32 on the roster.

4941 Ms. Deterding. Amendment to the amendment in the nature
4942 of a substitute to H.R. 3309, offered by Mr. Richmond of
4943 Louisiana, page 36, line 19, insert after "the office" the
4944 following, "and the relevant offices at the Small Business
4945 Administration and the Minority Business Development
4946 Agency."

4947 Mr. Richmond. Mr. Chairman, I would ask that we
4948 dispense with the reading of the amendment.

4949 Chairman Goodlatte. Without objection, the amendment
4950 shall be considered as read.

4951 [The amendment of Mr. Richmond follows:]

4952

4953 Chairman Goodlatte. And the gentleman is recognized on
4954 his amendment for 5 minutes.

4955 Mr. Richmond. Thank you, Mr. Chairman. What this
4956 amendment simply does is require the small business patent
4957 ombudsman to work with the small business experts at the
4958 Small Business Administration and the Minority Business
4959 Development Agency to better understand and serve the needs
4960 of small firms regarding issues related to patent
4961 infringement suits. It also permits the director of the PTO
4962 to explore the needs of small firms owned by veterans,
4963 service-disabled veterans, minorities, and women
4964 entrepreneurs to help them understand and work through
4965 abusive patent lawsuit issues.

4966 This will bolster the small business outreach efforts of
4967 the PTO by leveraging the existing expertise of other small
4968 business agencies, which will produce efficiencies and
4969 reduce costs, in addition to better serving the small
4970 business community. Small businesses are the engines of
4971 economic growth, and as a former member of the Small
4972 Business Committee, small firms are close to my heart. I
4973 would urge my colleagues to support this common sense

4974 amendment to help support small businesses. And with that,

4975 Mr. Chairman --

4976 Chairman Goodlatte. Would the gentleman yield?

4977 Mr. Richmond. Sure.

4978 Chairman Goodlatte. I thank the gentleman for yielding.

4979 I thank the gentleman for offering this amendment. We

4980 believe that this is a good amendment, and we understand

4981 what the amendment is trying to address. We do think the

4982 language might need some adjustment, but I would be happy to

4983 accept the amendment at this time if the gentleman would

4984 agree to work with us if we need to make changes going to

4985 the floor.

4986 Mr. Richmond. Sure.

4987 Chairman Goodlatte. And with that, if there are no

4988 further requests, we will call for a vote on the amendment.

4989 All those in favor, respond by saying aye.

4990 Those opposed, no.

4991 In the opinion of the chair, the ayes have it, and the

4992 amendment is agreed to.

4993 The chair would advise members of the committee we are

4994 very close to having another amendment that has been

4995 carefully negotiated by members on both sides of the aisle.

4996 And if the members would forebear for a few minutes, we will

4997 have that ready to go.

4998 For what purpose does the gentleman from New York seek

4999 recognition?

5000 Mr. Jeffries. Mr. Chairman, I have an additional

5001 amendment at the desk.

5002 Chairman Goodlatte. The clerk will report the

5003 amendment.

5004 Mr. Jeffries. This is Jeffries 47.

5005 Ms. Deterding. Amendment to the amendment in the nature

5006 of a substitute to H.R. 3309, offered by Mr. Jeffries of New

5007 York, page 4, line 19 --

5008 Chairman Goodlatte. Without objection, the amendment is

5009 considered as read.

5010 [The amendment of Mr. Jeffries follows:]

5011

5012 Chairman Goodlatte. And the gentleman is recognized for
5013 5 minutes on his amendment.

5014 Mr. Jeffries. Thank you, Mr. Chairman. Mr. Chairman,
5015 this underlying bill creates heightened pleading standards
5016 for plaintiffs as a way to solve the pervasive problem of
5017 patent trolls. This front end remedy is a significant step
5018 in the right direction toward addressing the patent troll
5019 problem.

5020 H.R. 2639, the Patent Litigation and Innovation Act, a
5021 bipartisan bill previously introduced and authored with our
5022 colleague, Representative Farenthold, also includes
5023 heightened pleading standards as a front end approach to
5024 addressing the problem of abusive patent litigation
5025 concerns. However, I believe that any reform to the patent
5026 litigation system should be as balanced as possible. The
5027 underlying bill subjects complaints, counter claims, and
5028 cross claims to heightened pleading standards, thereby
5029 taking a significant step toward a measure of pleading
5030 parity.

5031 However, this amendment would extend the specificity
5032 requirements to responsive pleadings in the form of an

5033 answer. It is designed to ensure that the exchange of
5034 information related to the parameters of the litigation is
5035 balanced, equally applied to all parties in a dispute.

5036 We are here today to address a patent troll problem that
5037 harms investors, tech entrepreneurs, startups, large
5038 companies, and innovation. Yet, the underlying bill would
5039 impact all patent litigation, not just actions commenced by
5040 patent trolls. Therefore, it is our responsibility to try
5041 to craft a system that ensures judicial fairness for all
5042 legitimate patent litigants. For that reason, I urge the
5043 committee adopt this amendment and extend the heightened
5044 pleading requirement to both complaints and to answers.
5045 With that, I yield back.

5046 Chairman Goodlatte. The chair thanks the gentleman, and
5047 recognizes himself in opposition to the amendment. I thank
5048 the gentleman for his work on a number of aspects of this
5049 legislation, but I cannot support this amendment, which
5050 would apply heightened pleading standards to affirmative
5051 defenses.

5052 To my knowledge, there is no place in the U.S. Code that
5053 requires heightened pleading for affirmative defenses. The

5054 plaintiff has all the time it wants to prepare an
5055 infringement case, but a defendant only has 21 days to
5056 answer unless it waives service. Relatedly, this is going
5057 to raise the question of whether the defendant's contentions
5058 need to be essentially complete at this 21-day stage or
5059 whether the answer needs to be amended every time a new
5060 reference is found. Some cases have hundreds of prior art
5061 references which would make these pleadings ridiculously
5062 long.

5063 In addition, the defendants may want and need to hire
5064 expert witnesses to read through and consider the patent,
5065 which does make this timeframe difficult as a practical
5066 matter. This sort of exchange is probably best left for
5067 discovery. It is for these reasons that I urge my
5068 colleagues to oppose the amendment.

5069 The question occurs on the amendment offered by the
5070 gentleman from New York.

5071 All in favor, respond by saying aye.

5072 Those opposed, no.

5073 In the opinion of the chair, the noes have it, and the
5074 amendment is not agreed to.

5075 Mr. Jeffries. May I ask for a recorded vote?

5076 Chairman Goodlatte. A recorded vote is requested. The

5077 clerk will call the roll.

5078 Ms. Deterding. Mr. Goodlatte?

5079 Chairman Goodlatte. No.

5080 Ms. Deterding. Mr. Goodlatte votes no.

5081 Mr. Sensenbrenner?

5082 [No response.]

5083 Ms. Deterding. Mr. Coble?

5084 [No response.]

5085 Ms. Deterding. Mr. Smith of Texas?

5086 Mr. Smith of Texas. No.

5087 Ms. Deterding. Mr. Smith of Texas votes no.

5088 Mr. Chabot?

5089 Mr. Chabot. No.

5090 Ms. Deterding. Mr. Chabot votes no.

5091 Mr. Bachus?

5092 Mr. Bachus. No.

5093 Ms. Deterding. Mr. Bachus votes no.

5094 Mr. Issa?

5095 [No response.]

5096 Ms. Deterding. Mr. Forbes?
5097 Mr. Forbes. No.
5098 Ms. Deterding. Mr. Forbes votes no.
5099 Mr. King?
5100 [No response.]
5101 Ms. Deterding. Mr. Franks?
5102 Mr. Franks. No.
5103 Ms. Deterding. Mr. Franks votes no.
5104 Mr. Gohmert?
5105 [No response.]
5106 Ms. Deterding. Mr. Jordan?
5107 Mr. Jordan. No.
5108 Ms. Deterding. Mr. Jordan votes no.
5109 Mr. Poe?
5110 Mr. Poe. No.
5111 Ms. Deterding. Mr. Poe votes no.
5112 Mr. Chaffetz?
5113 Mr. Chaffetz. No.
5114 Ms. Deterding. Mr. Chaffetz votes no.
5115 Mr. Marino?
5116 Mr. Marino. No.

5117 Ms. Deterding. Mr. Marino votes no.
5118 Mr. Gowdy?
5119 Mr. Gowdy. No.
5120 Ms. Deterding. Mr. Gowdy votes no.
5121 Mr. Amodei?
5122 Mr. Amodei. No.
5123 Ms. Deterding. Mr. Amodei votes no.
5124 Mr. Labrador?
5125 Mr. Labrador. No.
5126 Ms. Deterding. Mr. Labrador votes no.
5127 Mr. Farenthold?
5128 Mr. Farenthold. No.
5129 Ms. Deterding. Mr. Farenthold votes no.
5130 Mr. Holding?
5131 Mr. Holding. No.
5132 Ms. Deterding. Mr. Holding votes no.
5133 Mr. Collins?
5134 Mr. Collins. No.
5135 Ms. Deterding. Mr. Collins votes no.
5136 Mr. DeSantis?
5137 Mr. DeSantis. No.

5138 Ms. Deterding. Mr. DeSantis votes no.
5139 Mr. Smith of Missouri?
5140 Mr. Smith of Missouri. No.
5141 Ms. Deterding. Mr. Smith of Missouri votes no.
5142 Mr. Conyers?
5143 Mr. Conyers. Aye.
5144 Ms. Deterding. Mr. Conyers votes aye.
5145 Mr. Nadler?
5146 Mr. Nadler. Pass.
5147 Ms. Deterding. Mr. Scott?
5148 Mr. Scott. Aye.
5149 Ms. Deterding. Mr. Scott votes aye.
5150 Mr. Watt?
5151 Mr. Watt. Aye.
5152 Ms. Deterding. Mr. Watt votes aye.
5153 Ms. Lofgren?
5154 Ms. Lofgren. No.
5155 Ms. Deterding. Ms. Lofgren votes no.
5156 Ms. Jackson Lee?
5157 Ms. Jackson Lee. Aye.
5158 Ms. Deterding. Ms. Jackson Lee votes aye.

5159 Mr. Cohen?

5160 Mr. Cohen. Aye.

5161 Ms. Deterding. Mr. Cohen votes aye.

5162 Mr. Johnson?

5163 Mr. Johnson. Aye.

5164 Ms. Deterding. Mr. Johnson votes aye.

5165 Mr. Pierluisi?

5166 Mr. Pierluisi. No.

5167 Ms. Deterding. Mr. Pierluisi votes no.

5168 Ms. Chu?

5169 Ms. Chu. Aye.

5170 Ms. Deterding. Ms. Chu votes aye.

5171 Mr. Deutch?

5172 Mr. Deutch. Aye.

5173 Ms. Deterding. Mr. Deutch votes aye.

5174 Mr. Gutierrez?

5175 Mr. Gutierrez. Aye.

5176 Ms. Deterding. Mr. Gutierrez votes aye.

5177 Ms. Bass?

5178 [No response.]

5179 Ms. Deterding. Mr. Richmond?

5180 Mr. Richmond. Aye.

5181 Ms. Deterding. Mr. Richmond votes aye.

5182 Ms. DelBene?

5183 Ms. DelBene. No.

5184 Ms. Deterding. Ms. DelBene votes no.

5185 Mr. Garcia?

5186 [No response.]

5187 Ms. Deterding. Mr. Jeffries?

5188 Mr. Jeffries. Aye.

5189 Ms. Deterding. Mr. Jeffries votes aye.

5190 Chairman Goodlatte. The gentleman from North Carolina?

5191 Mr. Coble. No.

5192 Ms. Deterding. Mr. Coble votes no.

5193 Chairman Goodlatte. The gentleman from Texas?

5194 Mr. Gohmert. No.

5195 Ms. Deterding. Mr. Gohmert votes no.

5196 Chairman Goodlatte. Has every member voted who wishes

5197 to vote?

5198 Mr. Nadler. Mr. Chairman?

5199 Chairman Goodlatte. The gentleman from New York?

5200 Mr. Nadler. I vote aye.

5201 Ms. Deterding. Mr. Nadler votes aye.

5202 Chairman Goodlatte. The clerk will report.

5203 Ms. Deterding. Mr. Chairman, 12 members voted aye, 23
5204 members voted nay.

5205 Chairman Goodlatte. And the amendment is not agreed to.

5206 For what purpose does the gentleman from New York seek
5207 recognition? I take it the other amendment will not be
5208 offered.

5209 The committee will stand in recess for 10 minutes while
5210 we complete language on an additional amendment that I think
5211 a number of members are working on and have come together
5212 on.

5213 [Recess.]

5214 Chairman Goodlatte. The committee will reconvene and
5215 continue with consideration of amendments to the manager's
5216 amendment to H.R. 3309.

5217 For what purpose does the gentleman from New York seek
5218 recognition?

5219 Mr. Jeffries. Mr. Chairman, I have an amendment at the
5220 desk in the nature of a substitute, Jeffries 26.

5221 Chairman Goodlatte. An amendment to the amendment in

5222 the nature of a substitute.

5223 And the clerk will report that amendment.

5224 Ms. Deterding. Amendment to the amendment in the nature
5225 of a substitute to H.R. 3309, offered by Mr. Jeffries of New
5226 York, page 5, strike lines 18 --

5227 Chairman Goodlatte. Without objection, the amendment
5228 will be considered as read.

5229 [The amendment of Mr. Jeffries follows:]

5230

5231 Chairman Goodlatte. And the gentleman from North
5232 Carolina reserves the right to object.

5233 Mr. Watt. I would like to hear what the --

5234 Chairman Goodlatte. Well, that is a good point actually
5235 because so much time has been spent on this short amendment
5236 that maybe we should read the whole thing. So the clerk
5237 will continue to read.

5238 Mr. Watt. And I will object to any --

5239 Ms. Deterding. Page 5, strike lines 18 through 25 and
5240 replace it with the following: (a) Award. The court shall
5241 award to a prevailing party reasonable fees and other
5242 expenses incurred by that party in connection with a civil
5243 action in which any party asserts a claim for relief arising
5244 any act of Congress relating to patents, unless the court
5245 finds that the position and the conduct of the non-
5246 prevailing party or parties were reasonably justified in law
5247 and in fact or that special circumstances, such as severe
5248 economic hardship to a named inventor, make an award unjust.

5249 Chairman Goodlatte. The gentleman from New York is
5250 recognized for 5 minutes on his amendment.

5251 Mr. Jeffries. Mr. Chairman, thank you very much. And

5252 this amendment makes modest changes to the fee shifting
5253 provision in the underlying bill and the manager's
5254 amendment, but does so in a way that is designed to strike
5255 the appropriate balance between a fee shifting award being
5256 made in a situation where litigation has been commenced that
5257 lacks any objective basis in law or in fact, and was
5258 commenced in a frivolous way, and makes the distinction, or
5259 at least attempts to make the distinction, in a manner that
5260 would protect individual litigants who have commenced
5261 litigation in good faith, though may not necessarily have
5262 prevailed during the duration of the litigation.

5263 It is essentially anchored in two concerns that I have
5264 had with respect to proceeding in this area. First, I still
5265 think that the Congress in an instance where the Supreme
5266 Court has made the decision, as it has in the context of
5267 Section 285, to evaluate this particular fee shifting
5268 provision in the patent context, to determine what is the
5269 appropriate way forward. And the Supreme Court, as we know,
5270 has granted cert and is expected to hear this action that
5271 for reasons of comity as it relates to a separate, but co-
5272 equal, branch of government that we in the Congress should

5273 proceed with caution.

5274 That said, to the extent that we are going to move
5275 forward and make an adjustment in this area, I do think it
5276 is appropriate that whatever adjustment we make be designed
5277 to ensure that litigants who have commenced legitimate
5278 actions, even if they do not ultimately prevail, not become
5279 collateral damage as a result of the effort to try and deter
5280 patent troll litigation for moving forward.

5281 I think that this amendment to the amendment takes a
5282 step in that direction. I thank the chair for his
5283 willingness to try to work to find some common ground, and I
5284 do hope that we can continue this dialogue moving forward to
5285 ensure that as we make significant changes in the patent
5286 litigation space that we not have unintended consequences
5287 that could hurt the inventor, the tech entrepreneur, the
5288 startup company, or legitimate people simply trying to
5289 vindicate their rights under law. And with that, I yield
5290 back.

5291 Chairman Goodlatte. The chair thanks the gentleman, and
5292 recognizes himself in support of the amendment. I want to
5293 thank the gentleman from New York especially for the amount

5294 of time and effort that he has put into not just this
5295 amendment, but other efforts to improve this legislation.
5296 And he has worked with us, as have many other members on
5297 both sides of the aisle, in very good faith to come up with
5298 this amendment.

5299 And I support the amendment. I believe that it allows
5300 for a strong fee shifting regime while comporting with the
5301 Supreme Court precedents and the Equal Access to Justice
5302 Act. I think this provision works, and I thank him for his
5303 work in producing it for us. And I support the amendment.

5304 For what purpose does the gentleman from North Carolina
5305 seek recognition?

5306 Mr. Watt. Move to strike the last word, Mr. Chairman.

5307 Chairman Goodlatte. The gentleman is recognized for 5
5308 minutes.

5309 Mr. Watt. Mr. Chairman, first, I want to compliment Mr.
5310 Jeffries and the other parties who have continued to work on
5311 this. It is a difficult issue. I will support the
5312 amendment because it is better than what is in the original
5313 bill. Unfortunately, it will not impel me to support the
5314 entire bill, but I am happy to know that there is dialogue

5315 continuing on this.

5316 This is still mandatory in the absence of a burden of
5317 proof basically on the defendant, and I think that is
5318 unfair. But this is better than what is in the bill, and I
5319 intend to vote for the amendment even though I intend to
5320 vote against the bill. I yield back.

5321 Chairman Goodlatte. For what purpose does the gentleman
5322 from -- gentlewoman from California seek recognition?

5323 Ms. Lofgren. Just briefly to commend Mr. Jeffries for
5324 his amendment. And as I mentioned earlier in the markup, I
5325 actually believe that the underlying language was not so
5326 terrible, but that this language certainly clarifies the
5327 concerns, the good faith concerns, that were raised. And I
5328 really thank and want to commend the gentleman, that there
5329 was not a disagreement so much between the chairman and Mr.
5330 Jeffries so much as there was a need to get this drafted
5331 right. So thank you very much, Mr. Jeffries, for your work,
5332 and I look forward to voting for the amendment. And I yield
5333 back.

5334 Chairman Goodlatte. For what purpose does the gentleman
5335 from Florida seek recognition?

5336 Mr. Garcia. Move to strike the last word.

5337 Chairman Goodlatte. The gentleman is recognized for 5
5338 minutes.

5339 Mr. Garcia. Mr. Chairman, I appreciate the fact that
5340 you have worked with Mr. Jeffries. That gives me some hope.
5341 And along with what Mr. Watt said, I will support this
5342 because it is better than the alternative.

5343 I also want to state for the record that I am going to
5344 vote for the underlying bill in the hope that this will be
5345 fixed. If not, I and I think some of the folks that are on
5346 this committee will be compelled to go the other way. We
5347 need to have a more robust dialogue here. And while I
5348 appreciate the incredible amount of work that the chairman
5349 has put in, his attempt to bring many parties here, we know
5350 that there is an underlying fundamental problem with patent
5351 trolls, but we also know that this is an overreach. And
5352 hopefully this is, to some degree, a ploy to get a better
5353 negotiation position from what is going to come out of the
5354 Senate.

5355 But this is a complete shift of burden. I think in the
5356 end it hurts inventors. It hurts small entrepreneurs. And

5357 what we need to do is a balance. We need to fix this. We
5358 do not need to re-regulate the entire legal regime around
5359 this. I yield back the balance of my time.

5360 Mr. Conyers. Mr. Chairman?

5361 Chairman Goodlatte. For what purpose does the gentleman
5362 from Michigan seek recognition?

5363 Mr. Conyers. I rise in opposition to this amendment.

5364 And the way it has been created, I suppose those who put
5365 this together were searching for a way to make the bill more
5366 acceptable, and I am not sure if that was accomplished or
5367 not. The bill is so deficient that, to be honest with you,
5368 what difference would it make if you are -- there are so
5369 many inconsistencies. And then at the last minute, without
5370 any hearings whatsoever or examination of this, we now have
5371 changes being made that are as likely to confuse the courts
5372 as it will the members of this legislative body if and when
5373 it stays in the bill and gets to the floor. There are many
5374 issues raised here.

5375 I could be more cooperative at this hour, and just go
5376 along with it, and hope that it really improves whatever it
5377 is replacing. I just hope nobody asks me what it is

5378 replacing because I am not at all clear on it, but we are
5379 limiting it to named inventors. What does that include?
5380 Spouses or children if the inventor passes. Many of these
5381 issues are being considered in the court now, and I cannot
5382 get over the impression that the Judicial Conference ought
5383 to be -- the courts themselves ought to be dealing with
5384 these kinds of details.

5385 We have lost our purpose. We are acting like we are
5386 members of the Judicial Conference making all these kinds of
5387 technical changes at this hour and with this little
5388 knowledge. I am deeply troubled by it. And to be honest
5389 with you as I conclude, I am obviously not going to support
5390 the bill anyway, so whether it is in or out, it really will
5391 not honestly change my opinion. But I cannot say that this
5392 makes things better because I cannot tell.

5393 Chairman Goodlatte. Will the gentleman yield?

5394 Mr. Conyers. Of course.

5395 Chairman Goodlatte. I thank the ranking member for
5396 yielding. And, first of all, I take his comments to heart,
5397 and we will continue to work as we move forward, but I think
5398 this is a very good resolution. And to answer your specific

5399 point about a named inventor, that is defined in the America
5400 Invent's Act at 35 U.S.C. Section 100. So it is based on
5401 specific language already in the law.

5402 But I do want to assure the gentleman from New York that
5403 both sides here have acted in good faith in reaching this
5404 point, and we are willing to consider and work with those
5405 who want to address more.

5406 For what purpose does the gentleman from New York seek
5407 recognition? Have you yielded back?

5408 Mr. Conyers. I will yield back now.

5409 Chairman Goodlatte. The gentleman from New York.

5410 Mr. Nadler. Mr. Chairman, I want to support this
5411 amendment, and I just want to put it in context. The
5412 provision that it seeks to amend, which is the fee shifting
5413 provision, is, as I have said before, from my point of view,
5414 not a desirable provision, to put it mildly, one that I
5415 oppose.

5416 This amendment does make a change in that provision. It
5417 makes it mildly less bad, and, therefore, is an improvement.
5418 And essentially it does so by saying that the exception to
5419 the fee shifting is where the court finds the position and

5420 conduct of the non-prevailing party or parties were
5421 reasonably justified instead of the old language
5422 "substantially justified." What that means is should this
5423 provision get into law -- god forbid -- some people who lose
5424 but have a reasonably justifiable claim would not have to
5425 pay under loser pays because although the court may find
5426 that their claim is reasonable, it is not substantial, which
5427 is a higher bar. So I think it makes a less drastic change
5428 in the law, and, therefore, a less objectionable change in
5429 the law. And, therefore, it is an improvement, so I support
5430 the amendment. I yield back.

5431 Mr. Watt. Mr. Chairman?

5432 Chairman Goodlatte. For what purpose does the gentleman
5433 from North Carolina seek recognition?

5434 Mr. Watt. Mr. Chairman, I am trying to get to the desk
5435 an amendment to the Jeffries amendment, a second degree
5436 amendment to the Jeffries amendment.

5437 Chairman Goodlatte. The gentleman is advised by the
5438 chair that that is a third degree amendment, and it would
5439 not be in order.

5440 Mr. Watt. I ask unanimous consent that it --

5441 Chairman Goodlatte. I object.

5442 Mr. Watt. Well then, in that case, I will offer it as a
5443 freestanding amendment then.

5444 Chairman Goodlatte. If it is in order, we will consider
5445 it.

5446 Mr. Watt. So I am trying to get it to the desk. That
5447 is what -- it is at the desk. I do not know if he has
5448 enough copies of it to pass around.

5449 Chairman Goodlatte. We need to deal with the amendment
5450 before the committee now.

5451 Mr. Watt. All right. Well, make some copies.

5452 Chairman Goodlatte. And then we will consider that if
5453 it is in order.

5454 For what purpose does the gentlewoman from Texas seek
5455 recognition?

5456 Ms. Jackson Lee. For dual purposes. First of all, I,
5457 too, want to thank Mr. Jeffries for working to find a
5458 balance. And I also have paid attention to his comments
5459 where we are with the judiciary and the possibility of
5460 moving forward. My amendment previously attempted to strike
5461 Section 3, which in essence still, I believe, made an

5462 unequal playing field where the loser pays policy prevents
5463 plaintiffs from receiving fair compensation and deters them
5464 from pursuing meritorious patent infringement claims.

5465 What disturbs me is that we have lumped everyone who
5466 raises a claim as being bad, as being an obstruction, as
5467 being of mal-intent, of being not a legitimate claim, and I
5468 do not think that is accurate. We are trying to get those
5469 who make their business out of undermining another
5470 inventor's work, I believe that is not, in essence, worthy
5471 of eliminating or making the playing field equal.

5472 As I read this amendment, you could read it and find out
5473 that the prevailing party gets reasonable fees and other
5474 expenses incurred by that party in connection with a civil
5475 action, which could be a plaintiff or defendant, in which
5476 any party asserts a claim for relief under any act of
5477 Congress, unless the court finds that the position and
5478 conduct of the non-prevailing party or parties was
5479 reasonably justified in law and fact, or that special
5480 circumstances, such as severe economic hardship, make an
5481 award unjust.

5482 So it is a mercy effort, which I compliment the

5483 gentleman on. But it is throwing the dice, to a certain
5484 extent. And I am certainly going to vote for the amendment
5485 because I think a lot of work has gone into it, and I credit
5486 the gentleman for his leadership. But I believe it is
5487 important to again raise the concerns by the Federal
5488 Judicial Conference, the American Bar Association, the
5489 American Intellectual Property Law Association, the Patent
5490 Office's Professional Association, the American Association
5491 of Universities, the Biotechnology Industry Association, the
5492 21st Century Patent Coalition, the Innovation Alliance, the
5493 American Association for Justice, Pharmaceutical Research
5494 and Manufacturers Association, the Institute of Electrical
5495 and Electronic Engineers, and the National Association of
5496 Patent Practitioners, and the National Bankruptcy
5497 Conference.

5498 So again, I want to work through legislation that is to
5499 provide an even playing field. I still think that we could
5500 have taken more time. We did not have a single legislative
5501 hearing. We skipped the subcommittee. We moved to markup,
5502 and now we are marking up really from the first level, which
5503 is the subcommittee markup.

5504 So I want to support Mr. Jeffries' amendment and thank
5505 him for a very vigorous effort. And I hope that as we make
5506 our way through to the floor, make our way to conference,
5507 look at the Senate bill, that we will get where we need to
5508 be. I would like to look at the cup as half full and not
5509 half empty, but a bill passed out of this committee is not
5510 law. And I think we need to make sure that we find an even
5511 playing field for the law to really work.

5512 And let me stand corrected because a note just came to
5513 me and said that there was one hearing on the bill. There
5514 may have been others, but one hearing specifically on this
5515 bill. So I am concerned about this unequal playing field
5516 for legitimate petition, and now there is a second layer of
5517 determining whether or not you have to be burdened by the
5518 loser pays the fees, and that is that the court has to make
5519 another finding, that you are reasonably justified by law,
5520 and that you could reasonably justified by facts and the law
5521 could be minimal or vice versa.

5522 So I am hoping that as we support this amendment of Mr.
5523 Jeffries that we also see the need to work more closely and
5524 extensively as we make our way toward the floor. And I hope

5525 the --

5526 Chairman Goodlatte. Okay. The time of the gentlewoman
5527 has expired.

5528 Ms. Jackson Lee. I hope that those who are stakeholders
5529 will visit more members and so we can understand your
5530 position. Thank you. I yield back.

5531 Chairman Goodlatte. For what purpose does the gentleman
5532 from Georgia seek recognition?

5533 Mr. Johnson. Move to strike the last word.

5534 Chairman Goodlatte. The gentleman is recognized for 5
5535 minutes.

5536 Mr. Johnson. Thank you, Mr. Chairman. I rise in
5537 reluctant opposition to the amendment. I am reluctant about
5538 it because I like the idea of the chairman and a member from
5539 our side working together to achieve a just result. But I
5540 cannot vote in favor of it because I do not believe that the
5541 remedy is a good one.

5542 I think that when we talk about fee shifting to solve
5543 what is a fundament problem, which is the issuance of
5544 patents that are not of the quality that they should be, I
5545 think that is what causes the litigation, be it from patent

5546 trolls or from legitimate, hardworking property owners who
5547 are looking to assert their property rights in court. So if
5548 we can rectify and ensure that we have more quality patents
5549 being issued, we cannot get that by closing the courthouse
5550 door on people who are trying to assert their property
5551 rights.

5552 And so, I have a problem with this fee shifting as a
5553 remedy that is supposed to be a silver bullet for the issue
5554 of a faulty patent being issued.

5555 And that is not to cast aspersions on the Patent Office
5556 because the Patent Office is full of hard-working, dedicated
5557 professionals honestly doing their job to the best extent
5558 that they can. But we here in Congress have to understand
5559 that our funding decisions have a great impact on the
5560 ability of the Patent Office to do the job that one would
5561 expect.

5562 And so, I think there are a number of -- there are a
5563 number of problems that cause patent trolling, and the way
5564 to get at that is not to shift fees and punish even the
5565 innocent who seek to file a case by frightening them away
5566 from the courthouse with the specter of being hit with fees

5567 if they lose. That is just not the American way, and I
5568 think that if we start going down this road, it is actually
5569 opening up a Trojan horse in the law or in the manner in
5570 which we go about solving our disputes.

5571 If we do it, if we open the door here, Mr. Chairman, for
5572 fee shifting, then it is only a matter of time before the
5573 manner in which we settle our disputes is unalterably
5574 changed to a point where we are not encouraging people to
5575 settle their disputes in a civilized way.

5576 So, with that having been said, I must reluctantly
5577 oppose the amendment, and I yield back.

5578 Chairman Goodlatte. The question occurs on the
5579 amendment offered by the gentleman from New York.

5580 All those in favor, respond by saying aye.

5581 Those opposed, no.

5582 In the opinion of the chair, the ayes have it.

5583 Mr. Richmond. Mr. Chairman, I ask for a recorded vote.

5584 Chairman Goodlatte. A recorded vote is requested, and
5585 the clerk will call the roll.

5586 Ms. Deterding. Mr. Goodlatte?

5587 Chairman Goodlatte. Aye.

5588 Ms. Deterding. Mr. Goodlatte votes aye.

5589 Mr. Sensenbrenner?

5590 [No response.]

5591 Ms. Deterding. Mr. Coble?

5592 [No response.]

5593 Ms. Deterding. Mr. Smith of Texas?

5594 Mr. Smith of Texas. Aye.

5595 Ms. Deterding. Mr. Smith of Texas votes aye.

5596 Mr. Chabot?

5597 Mr. Chabot. Aye.

5598 Ms. Deterding. Mr. Chabot votes aye.

5599 Mr. Bachus?

5600 Mr. Bachus. Aye.

5601 Ms. Deterding. Mr. Bachus votes aye.

5602 Mr. Issa?

5603 [No response.]

5604 Ms. Deterding. Mr. Forbes?

5605 [No response.]

5606 Ms. Deterding. Mr. King?

5607 Mr. King. Aye.

5608 Ms. Deterding. Mr. King votes aye.

5609 Mr. Franks?

5610 Mr. Franks. Aye.

5611 Ms. Deterding. Mr. Franks votes aye.

5612 Mr. Gohmert?

5613 [No response.]

5614 Ms. Deterding. Mr. Jordan?

5615 Mr. Jordan. Aye.

5616 Ms. Deterding. Mr. Jordan votes aye.

5617 Mr. Poe?

5618 [No response.]

5619 Ms. Deterding. Mr. Chaffetz?

5620 Mr. Chaffetz. Aye.

5621 Ms. Deterding. Mr. Chaffetz votes aye.

5622 Mr. Marino?

5623 Mr. Marino. Aye.

5624 Ms. Deterding. Mr. Marino votes aye.

5625 Mr. Gowdy?

5626 Mr. Gowdy. Aye.

5627 Ms. Deterding. Mr. Gowdy votes aye.

5628 Mr. Amodei?

5629 Mr. Amodei. Aye.

5630 Ms. Deterding. Mr. Amodei votes aye.

5631 Mr. Labrador?

5632 Mr. Labrador. Yes.

5633 Ms. Deterding. Mr. Labrador votes aye.

5634 Mr. Farenthold?

5635 Mr. Farenthold. Aye.

5636 Ms. Deterding. Mr. Farenthold votes aye.

5637 Mr. Holding?

5638 Mr. Holding. Aye.

5639 Ms. Deterding. Mr. Holding votes aye.

5640 Mr. Collins?

5641 Mr. Collins. Aye.

5642 Ms. Deterding. Mr. Collins votes aye.

5643 Mr. DeSantis?

5644 Mr. DeSantis. Aye.

5645 Ms. Deterding. Mr. DeSantis votes aye.

5646 Mr. Smith of Missouri?

5647 Mr. Smith of Missouri. Aye.

5648 Ms. Deterding. Mr. Smith of Missouri votes aye.

5649 Mr. Conyers?

5650 Mr. Conyers. No.

5651 Ms. Deterding. Mr. Conyers votes no.
5652 Mr. Nadler?
5653 Mr. Nadler. Aye.
5654 Ms. Deterding. Mr. Nadler votes aye.
5655 Mr. Scott?
5656 Mr. Scott. Aye.
5657 Ms. Deterding. Mr. Scott votes aye.
5658 Mr. Watt?
5659 Mr. Watt. Aye.
5660 Ms. Deterding. Mr. Watt votes aye.
5661 Ms. Lofgren?
5662 Ms. Lofgren. Aye.
5663 Ms. Deterding. Ms. Lofgren votes aye.
5664 Ms. Jackson Lee?
5665 Ms. Jackson Lee. Aye.
5666 Ms. Deterding. Ms. Jackson Lee votes aye.
5667 Mr. Cohen?
5668 Mr. Cohen. Aye.
5669 Ms. Deterding. Mr. Cohen votes aye.
5670 Mr. Johnson?
5671 Mr. Johnson. No.

5672 Ms. Deterding. Mr. Johnson votes no.

5673 Mr. Pierluisi?

5674 Mr. Pierluisi. Aye.

5675 Ms. Deterding. Mr. Pierluisi votes aye.

5676 Ms. Chu?

5677 Ms. Chu. Aye.

5678 Ms. Deterding. Ms. Chu votes aye.

5679 Mr. Deutch?

5680 Mr. Deutch. Aye.

5681 Ms. Deterding. Mr. Deutch votes aye.

5682 Mr. Gutierrez?

5683 Mr. Gutierrez. Aye.

5684 Ms. Deterding. Mr. Gutierrez votes aye.

5685 Ms. Bass?

5686 Ms. Bass. Aye.

5687 Ms. Deterding. Ms. Bass votes aye.

5688 Mr. Richmond?

5689 Mr. Richmond. Aye.

5690 Ms. Deterding. Mr. Richmond votes aye.

5691 Ms. DelBene?

5692 Ms. DelBene. Aye.

5693 Ms. Deterding. Ms. DelBene votes aye.

5694 Mr. Garcia?

5695 Mr. Garcia. Aye.

5696 Ms. Deterding. Mr. Garcia votes aye.

5697 Mr. Jeffries?

5698 Mr. Jeffries. Aye.

5699 Ms. Deterding. Mr. Jeffries votes aye.

5700 Chairman Goodlatte. The gentleman from Texas, Mr.

5701 Gohmert?

5702 Mr. Gohmert. Aye.

5703 Ms. Deterding. Mr. Gohmert votes aye.

5704 Chairman Goodlatte. The gentleman from Virginia?

5705 Mr. Forbes. Aye.

5706 Ms. Deterding. Mr. Forbes votes aye.

5707 Chairman Goodlatte. The gentleman from Texas, Mr. Poe?

5708 Mr. Poe. Yes.

5709 Ms. Deterding. Mr. Poe votes aye.

5710 Chairman Goodlatte. The gentleman from North Carolina?

5711 Mr. Coble. Aye.

5712 Ms. Deterding. Mr. Coble votes aye.

5713 Chairman Goodlatte. Is there any other Member who

5714 wishes to vote who has not voted?

5715 [No response.]

5716 Chairman Goodlatte. The clerk will report.

5717 Ms. Deterding. Mr. Chairman, 36 Members voted aye; 2

5718 Members voted nay.

5719 Chairman Goodlatte. And the amendment is agreed to.

5720 For what purpose does the gentleman from North Carolina

5721 seek recognition?

5722 Mr. Watt. I have an amendment at the desk.

5723 Chairman Goodlatte. The clerk will report the

5724 amendment.

5725 Ms. Deterding. Amendment to amendment by Mr. Watt.

5726 Page 6, insert the following before line 1. "The court in

5727 its discretion may reduce the amount to be awarded under

5728 Subsection (a) or deny an award to the extent that the

5729 prevailing party during the course of the proceedings

5730 engaged in conduct which unduly and unreasonably protracted

5731 the final resolution of the matter in controversy."

5732 [The amendment of Mr. Watt follows:]

5733

5734 Chairman Goodlatte. The gentleman from North Carolina
5735 is recognized for 5 minutes on his amendment.

5736 Mr. Watt. Thank you, Mr. Chairman.

5737 And let me first say that as I acknowledged in debate on
5738 Mr. Jeffries' amendment that Mr. Jeffries' amendment moves
5739 in a positive direction, and this amendment is an effort to
5740 move further in a positive direction by picking up specific
5741 language from the Equal Access to Justice Act, which the
5742 chair has indicated that he has based much of his thinking
5743 on.

5744 The language specifically says, and I am reading from
5745 the statute, "The court in its discretion may reduce the
5746 amount to be awarded, pursuant to this subsection, or deny
5747 an award to the extent that the prevailing party during the
5748 course of the proceedings engaged in conduct which unduly
5749 and unreasonably protracted the final resolution of the
5750 matter in controversy."

5751 And that will moderate the language further. It will
5752 move it in the direction that I think would be more
5753 acceptable. If we had more time, I think we could reach
5754 agreement on this, but that -- this makes the bill better in

5755 much the same way that Mr. Jeffries' language -- Mr.
5756 Jeffries' language, I guess, we could say makes it better.
5757 This makes it "mo' better," as we say.

5758 [Laughter.]

5759 Mr. Watt. So I ask my colleagues to support the
5760 amendment and yield back.

5761 Chairman Goodlatte. The chair thanks the gentleman and
5762 recognizes himself in opposition to the amendment.

5763 This amendment introduces several terms and phrases that
5764 while they are referenced in other places are not grounded
5765 in statute, and it would introduce incredible ambiguity into
5766 the statute and would most likely result in years of
5767 uncertainty in litigation to determine what this actually
5768 means.

5769 This amendment would create incredible uncertainty in
5770 the free markets. This amendment must be strongly opposed,
5771 and I urge my colleagues to do so.

5772 Who seeks recognition? The question occurs on the
5773 amendment.

5774 Mr. Garcia. Move to strike the last --

5775 Chairman Goodlatte. The gentleman from Florida is

5776 recognized for 5 minutes.

5777 Mr. Garcia. I will yield my time to the author of the
5778 amendment.

5779 Mr. Watt. No, I am fine. I mean, I have said what I
5780 have to say.

5781 Mr. Garcia. Thank you. I yield back my time.

5782 Mr. Watt. Thank you.

5783 Mr. Jeffries. Will the gentleman yield?

5784 Chairman Goodlatte. For what purpose does the gentleman
5785 from New York seek recognition?

5786 Mr. Jeffries. I move to strike the last word.

5787 Chairman Goodlatte. The gentleman is recognized for 5
5788 minutes.

5789 Mr. Jeffries. Yes, I just want to offer my support to
5790 the gentleman's amendment. I do think that it advances the
5791 ball further in the direction that I think reasonable minds
5792 on both sides of the aisle are trying to get to, which is to
5793 address the nature of the patent troll problem, but do so in
5794 a way that does not undermine the ability for legitimate
5795 inventors, tech entrepreneurs, start-ups, and other
5796 companies to use the litigation system, which is an

5797 important aspect of our democracy.

5798 I would also note that it does draw from a body of law
5799 inclusive of the language that the fee shifting provision in
5800 the underlying bill draws from, and therefore, I urge
5801 everyone to support passage of this amendment and yield
5802 back.

5803 Chairman Goodlatte. The question occurs on the
5804 amendment offered by the gentleman from North Carolina.

5805 All those in favor, respond by saying aye.

5806 Those opposed, no.

5807 In the opinion of the chair, the noes have it, and the
5808 amendment is not agreed to.

5809 Mr. Watt. Mr. Chairman, I ask for a recorded vote.

5810 Chairman Goodlatte. A recorded vote is requested, and
5811 the clerk will call the roll.

5812 Ms. Deterding. Mr. Goodlatte?

5813 Chairman Goodlatte. No.

5814 Ms. Deterding. Mr. Goodlatte votes no.

5815 Mr. Sensenbrenner?

5816 [No response.]

5817 Ms. Deterding. Mr. Coble?

5818 [No response.]

5819 Ms. Deterding. Mr. Smith of Texas?

5820 Mr. Smith of Texas. No.

5821 Ms. Deterding. Mr. Smith of Texas votes no.

5822 Mr. Chabot?

5823 Mr. Chabot. No.

5824 Ms. Deterding. Mr. Chabot votes no.

5825 Mr. Bachus?

5826 [No response.]

5827 Ms. Deterding. Mr. Issa?

5828 [No response.]

5829 Ms. Deterding. Mr. Forbes?

5830 Mr. Forbes. No.

5831 Ms. Deterding. Mr. Forbes votes no.

5832 Mr. King?

5833 Mr. King. No.

5834 Ms. Deterding. Mr. King votes no.

5835 Mr. Franks?

5836 Mr. Franks. No.

5837 Ms. Deterding. Mr. Franks votes no.

5838 Mr. Gohmert?

5839 [No response.]

5840 Ms. Deterding. Mr. Jordan?

5841 Mr. Jordan. No.

5842 Ms. Deterding. Mr. Jordan votes no.

5843 Mr. Poe?

5844 Mr. Poe. No.

5845 Ms. Deterding. Mr. Poe votes no.

5846 Mr. Chaffetz?

5847 Mr. Chaffetz. No.

5848 Ms. Deterding. Mr. Chaffetz votes no.

5849 Mr. Marino?

5850 Mr. Marino. No.

5851 Ms. Deterding. Mr. Marino votes no.

5852 Mr. Gowdy?

5853 Mr. Gowdy. No.

5854 Ms. Deterding. Mr. Gowdy votes no.

5855 Mr. Amodei?

5856 Mr. Amodei. No.

5857 Ms. Deterding. Mr. Amodei votes no.

5858 Mr. Labrador?

5859 Mr. Labrador. No.

5860 Ms. Deterding. Mr. Labrador votes no.

5861 Mr. Farenthold?

5862 Mr. Farenthold. No.

5863 Ms. Deterding. Mr. Farenthold votes no.

5864 Mr. Holding?

5865 Mr. Holding. No.

5866 Ms. Deterding. Mr. Holding votes no.

5867 Mr. Collins?

5868 Mr. Collins. No.

5869 Ms. Deterding. Mr. Collins votes no.

5870 Mr. DeSantis?

5871 Mr. DeSantis. No.

5872 Ms. Deterding. Mr. DeSantis votes no.

5873 Mr. Smith of Missouri?

5874 Mr. Smith of Missouri. No.

5875 Ms. Deterding. Mr. Smith of Missouri votes no.

5876 Mr. Conyers?

5877 Mr. Conyers. Aye.

5878 Ms. Deterding. Mr. Conyers votes aye.

5879 Mr. Nadler?

5880 Mr. Nadler. Aye.

5881 Ms. Deterding. Mr. Nadler votes aye.
5882 Mr. Scott?
5883 Mr. Scott. Aye.
5884 Ms. Deterding. Mr. Scott votes aye.
5885 Mr. Watt?
5886 Mr. Watt. Aye.
5887 Ms. Deterding. Mr. Watt votes aye.
5888 Ms. Lofgren?
5889 Ms. Lofgren. Aye.
5890 Ms. Deterding. Ms. Lofgren votes aye.
5891 Ms. Jackson Lee?
5892 Ms. Jackson Lee. Aye.
5893 Ms. Deterding. Ms. Jackson Lee votes aye.
5894 Mr. Cohen?
5895 [No response.]
5896 Ms. Deterding. Mr. Johnson?
5897 Mr. Johnson. Aye.
5898 Ms. Deterding. Mr. Johnson votes aye.
5899 Mr. Pierluisi?
5900 Mr. Pierluisi. Aye.
5901 Ms. Deterding. Mr. Pierluisi votes aye.

5902 Ms. Chu?

5903 Ms. Chu. Aye.

5904 Ms. Deterding. Ms. Chu votes aye.

5905 Mr. Deutch?

5906 Mr. Deutch. Aye.

5907 Ms. Deterding. Mr. Deutch votes aye.

5908 Mr. Gutierrez?

5909 Mr. Gutierrez. Aye.

5910 Ms. Deterding. Mr. Gutierrez votes aye.

5911 Ms. Bass?

5912 Ms. Bass. Aye.

5913 Ms. Deterding. Ms. Bass votes aye.

5914 Mr. Richmond?

5915 Mr. Richmond. Aye.

5916 Ms. Deterding. Mr. Richmond votes aye.

5917 Ms. DelBene?

5918 Ms. DelBene. Aye.

5919 Ms. Deterding. Ms. DelBene votes aye.

5920 Mr. Garcia?

5921 Mr. Garcia. Aye.

5922 Ms. Deterding. Mr. Garcia votes aye.

5923 Mr. Jeffries?

5924 Mr. Jeffries. Aye.

5925 Ms. Deterding. Mr. Jeffries votes aye.

5926 Chairman Goodlatte. The gentleman from North Carolina?

5927 Mr. Coble. No.

5928 Ms. Deterding. Mr. Coble votes no.

5929 Chairman Goodlatte. The gentleman from Alabama?

5930 Mr. Bachus. No.

5931 Ms. Deterding. Mr. Bachus votes no.

5932 Chairman Goodlatte. The gentleman from Tennessee?

5933 Mr. Cohen. Aye.

5934 Ms. Deterding. Mr. Cohen votes aye.

5935 Chairman Goodlatte. The gentleman from Texas?

5936 Mr. Gohmert. No.

5937 Ms. Deterding. Mr. Gohmert votes no.

5938 Chairman Goodlatte. Has every Member voted who wishes

5939 to vote?

5940 [No response.]

5941 Chairman Goodlatte. The clerk will report.

5942 Ms. Deterding. Mr. Chairman, 17 Members voted aye; 21

5943 Members voted nay.

5944 Chairman Goodlatte. And the amendment is not agreed to.

5945 Are there any other amendments to the amendment?

5946 [No response.]

5947 Chairman Goodlatte. There are no further amendments to

5948 the amendment. And the question is on the manager's

5949 amendment.

5950 Those in favor will say aye.

5951 Those opposed, no.

5952 In the opinion of the chair, the ayes have it, and the

5953 amendment is agreed to.

5954 A reporting quorum being present, the question is on the

5955 motion to report the bill H.R. 3309, as amended, favorably

5956 to the House.

5957 The clerk will call the roll.

5958 Ms. Deterding. Mr. Goodlatte?

5959 Chairman Goodlatte. Aye.

5960 Ms. Deterding. Mr. Goodlatte votes aye.

5961 Mr. Sensenbrenner?

5962 [No response.]

5963 Ms. Deterding. Mr. Coble?

5964 Mr. Coble. Aye.

5965 Ms. Deterding. Mr. Coble votes aye.

5966 Mr. Smith of Texas?

5967 Mr. Smith of Texas. Aye.

5968 Ms. Deterding. Mr. Smith of Texas votes aye.

5969 Mr. Chabot?

5970 Mr. Chabot. Aye.

5971 Ms. Deterding. Mr. Chabot votes aye.

5972 Mr. Bachus?

5973 Mr. Bachus. Aye.

5974 Ms. Deterding. Mr. Bachus votes aye.

5975 Mr. Issa?

5976 [No response.]

5977 Ms. Deterding. Mr. Forbes?

5978 Mr. Forbes. Aye.

5979 Ms. Deterding. Mr. Forbes votes aye.

5980 Mr. King?

5981 Mr. King. Aye.

5982 Ms. Deterding. Mr. King votes aye.

5983 Mr. Franks?

5984 Mr. Franks. Aye.

5985 Ms. Deterding. Mr. Franks votes aye.

5986 Mr. Gohmert?

5987 [No response.]

5988 Ms. Deterding. Mr. Jordan?

5989 Mr. Jordan. Aye.

5990 Ms. Deterding. Mr. Jordan votes aye.

5991 Mr. Poe?

5992 Mr. Poe. Yes.

5993 Ms. Deterding. Mr. Poe votes aye.

5994 Mr. Chaffetz?

5995 Mr. Chaffetz. Aye.

5996 Ms. Deterding. Mr. Chaffetz votes aye.

5997 Mr. Marino?

5998 Mr. Marino. Aye.

5999 Ms. Deterding. Mr. Marino votes aye.

6000 Mr. Gowdy?

6001 Mr. Gowdy. Aye.

6002 Ms. Deterding. Mr. Gowdy votes aye.

6003 Mr. Amodei?

6004 Mr. Amodei. Aye.

6005 Ms. Deterding. Mr. Amodei votes aye.

6006 Mr. Labrador?

6007 Mr. Labrador. Yes.

6008 Ms. Deterding. Mr. Labrador votes aye.

6009 Mr. Farenthold?

6010 Mr. Farenthold. Aye.

6011 Ms. Deterding. Mr. Farenthold votes aye.

6012 Mr. Holding?

6013 Mr. Holding. Aye.

6014 Ms. Deterding. Mr. Holding votes aye.

6015 Mr. Collins?

6016 Mr. Collins. Aye.

6017 Ms. Deterding. Mr. Collins votes aye.

6018 Mr. DeSantis?

6019 Mr. DeSantis. Aye.

6020 Ms. Deterding. Mr. DeSantis votes aye.

6021 Mr. Smith of Missouri?

6022 Mr. Smith of Missouri. Aye.

6023 Ms. Deterding. Mr. Smith of Missouri votes aye.

6024 Mr. Conyers?

6025 Mr. Conyers. No.

6026 Ms. Deterding. Mr. Conyers votes no.

6027 Mr. Nadler?

6028 Mr. Nadler. Aye.

6029 Ms. Deterding. Mr. Nadler votes aye.

6030 Mr. Scott?

6031 Mr. Scott. No.

6032 Ms. Deterding. Mr. Scott votes no.

6033 Mr. Watt?

6034 Mr. Watt. No.

6035 Ms. Deterding. Mr. Watt votes no.

6036 Ms. Lofgren?

6037 Ms. Lofgren. Aye.

6038 Ms. Deterding. Ms. Lofgren votes aye.

6039 Ms. Jackson Lee?

6040 Ms. Jackson Lee. No.

6041 Ms. Deterding. Ms. Jackson Lee votes no.

6042 Mr. Cohen?

6043 Mr. Cohen. Aye.

6044 Ms. Deterding. Mr. Cohen votes aye.

6045 Mr. Johnson?

6046 Mr. Johnson. No.

6047 Ms. Deterding. Mr. Johnson votes no.

6048 Mr. Pierluisi?

6049 Mr. Pierluisi. Aye.

6050 Ms. Deterding. Mr. Pierluisi votes aye.

6051 Ms. Chu?

6052 Ms. Chu. Aye.

6053 Ms. Deterding. Ms. Chu votes aye.

6054 Mr. Deutch?

6055 Mr. Deutch. Aye.

6056 Ms. Deterding. Mr. Deutch votes aye.

6057 Mr. Gutierrez?

6058 Mr. Gutierrez. Aye.

6059 Ms. Deterding. Mr. Gutierrez votes aye.

6060 Ms. Bass?

6061 Ms. Bass. Aye.

6062 Ms. Deterding. Ms. Bass votes aye.

6063 Mr. Richmond?

6064 Mr. Richmond. Aye.

6065 Ms. Deterding. Mr. Richmond votes aye.

6066 Ms. DelBene?

6067 Ms. DelBene. Aye.

6068 Ms. Deterding. Ms. DelBene votes aye.

6069 Mr. Garcia?

6070 Mr. Garcia. Aye.

6071 Ms. Deterding. Mr. Garcia votes aye.

6072 Mr. Jeffries?

6073 Mr. Jeffries. Aye.

6074 Ms. Deterding. Mr. Jeffries votes aye.

6075 Chairman Goodlatte. Has every Member voted who wishes

6076 to vote?

6077 [No response.]

6078 Chairman Goodlatte. The clerk will report.

6079 [Pause.]

6080 Chairman Goodlatte. Do we hear steps pounding in the

6081 hallway?

6082 [Pause.]

6083 Chairman Goodlatte. The clerk will report.

6084 Ms. Deterding. Mr. Chairman, 32 Members voted aye; 5

6085 Members voted nay.

6086 Chairman Goodlatte. And the bill is reported favorably.

6087 Ms. Jackson Lee. Excuse me. What is the count? Speak

6088 in the microphone.

6089 Chairman Goodlatte. The clerk will report the vote

6090 again.

6091 Ms. Deterding. Thirty-two Members voted aye; 5 Members
6092 voted nay.

6093 Ms. Jackson Lee. Thank you.

6094 Chairman Goodlatte. Yes, the ayes have it, and the
6095 bill, as amended, is ordered reported favorably.

6096 Members will have 2 days to submit views.

6097 Without objection, the bill will be reported as a single
6098 amendment in the nature of a substitute, incorporating all
6099 adopted amendments, and staff is authorized to make
6100 technical and conforming changes.

6101 Mr. Watt. Mr. Chairman? Mr. Chairman? I ask unanimous
6102 consent to allow Mr. Issa's vote to count in the final vote.

6103 Chairman Goodlatte. A motion has been made for
6104 unanimous consent to allow the clerk to reopen the roll and
6105 take the vote of the gentleman from California.

6106 Hearing no objection, the clerk will take the vote.

6107 Mr. Issa. Aye.

6108 Ms. Deterding. Mr. Issa votes aye.

6109 Chairman Goodlatte. And re-report the vote. The chair
6110 thanks the gentleman from North Carolina for his comedy.

6111 The clerk will report.

6112 Ms. Deterding. Thirty-three Members voted aye; 5

6113 Members voted nay.

6114 Chairman Goodlatte. The ayes again have it, and bill is
6115 ordered reported favorably.

6116 Without objection, the statement of the gentleman from
6117 Alabama, Mr. Bachus, on the customer stay provision and
6118 integrity loophole will be made a part of the record.

6119 [The information follows:]

6120

6121 Chairman Goodlatte. The chair thanks all the Members on
6122 both sides of the aisle and their staff for their good work
6123 on this amendment.

6124 And this meeting is adjourned.

6125 [Whereupon, at 8:19 p.m., the committee was adjourned.]